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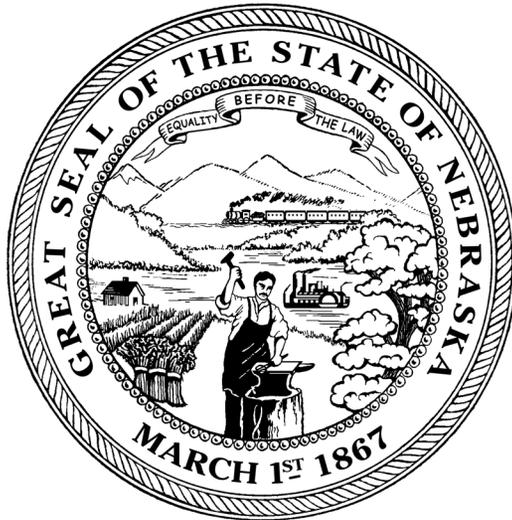
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REVISED STATUTES OF NEBRASKA

2007 SUPPLEMENT

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Joanne M. Pepperl
Revisor of Statutes

For the benefit of the
State of Nebraska

ARTICLE 10

STATE ANATOMICAL BOARD, DISPOSAL OF DEAD BODIES

Section.

71-1001. State Anatomical Board; members; powers and duties.

71-1001 State Anatomical Board; members; powers and duties. The heads of the anatomy departments of the medical schools and colleges of this state, one professor of anatomy appointed by the head of the anatomy department from each medical school or college of this state, one professor of anatomy appointed from each dental school or college of this state, and one layperson appointed by the Department of Health and Human Services shall constitute the State Anatomical Board of the State of Nebraska for the distribution, delivery, and use of certain dead human bodies, described in section 71-1002, to and among such schools, colleges, and persons as are entitled thereto under the provisions of such section. The board shall have power to establish rules and regulations for its government and for the collection, storage, and distribution of dead human bodies for anatomical purposes. It shall have power to appoint and remove its officers and agents. It shall keep minutes of its meetings. It shall cause a record to be kept of all of its transactions, of bodies received and distributed by it, and of the school, college, or person receiving every such body, and its records shall be open at all times to the inspection of each member of the board and to every county attorney within this state.

Source: Laws 1929, c. 158, § 1, p. 551; C.S.1929, § 71-2801; R.S.1943, § 71-1001; Laws 1969, c. 570, § 1, p. 2314; Laws 1978, LB 583, § 1; Laws 1979, LB 98, § 2; Laws 1992, LB 860, § 2; Laws 1996, LB 1044, § 556; Laws 2007, LB296, § 464.
Operative date July 1, 2007.

ARTICLE 13

FUNERAL DIRECTORS, EMBALMING, AND CREMATION

(a) FUNERAL DIRECTORS AND EMBALMING

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- 71-1304. Transferred to section 38-1416.
- 71-1305. Transferred to section 38-1417.
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- 71-1327. Transferred to section 38-1419.
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- 71-1332. Repealed. Laws 2007, LB 463, § 1319.
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- 71-1333.01. Application for license; disciplinary actions; notice; hearing; procedure; appeal; director; powers; revocation or suspension; effect; reinstatement; civil penalty.
- 71-1333.02. Repealed. Laws 2007, LB 463, § 1319.
- 71-1333.03. Repealed. Laws 2007, LB 463, § 1319.
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(a) FUNERAL DIRECTORS AND EMBALMING

71-1301 Terms, defined. For purposes of sections 71-1301 to 71-1306 and 71-1326 to 71-1354, unless the context otherwise requires:

(1) Accredited school of mortuary science means a school of the same type as those rated Class A by the Conference of Funeral Service Examining Boards of the United States, Inc., approved by the department upon recommendation of the board;

(2) Apprentice means a person registered with the department as an apprentice who is completing a twelve-month apprenticeship under the supervision of a licensed funeral director and embalmer practicing in the State of Nebraska. The licensed funeral director and embalmer is responsible for all funeral assists and embalmings completed by the apprentice;

(3) Board means the Board of Funeral Directing and Embalming;

(4) Branch establishment means a place of business situated at a specific street address or location which is a subsidiary of a licensed funeral establishment, which contains a casket display room, a viewing area, or an area for conducting funeral services, or all of them, and where any portion of the funeral service or arrangements for the disposition of a dead human body is conducted;

(5) Casket means a receptacle for a dead human body and does not include vaults, lawn crypts, mausoleums, or other outside receptacles for caskets;

(6) Crematory authority means the legal entity subject to licensure by the department to maintain and operate a crematory and perform cremation;

(7) Department means the Division of Public Health of the Department of Health and Human Services;

(8) Embalming means the practice of preparing a dead human body for burial or other final disposal by a licensed funeral director and embalmer or an apprentice, requesting and obtaining burial or removal permits, or assuming any of the other duties incident to the practice of embalming. Any person who publicly professes to be a funeral director and embalmer or an apprentice is deemed to be practicing embalming. The performance of the following acts is also deemed to be the practice of embalming: (a) The disinfection and preservation of dead human beings, entire or in part; and (b) the attempted disinfection and preservation thereof by the use or application of chemical substances, fluids, or gases ordinarily used, prepared, or intended for such purposes, either by outward application of such chemical substances, fluids, or gases on the body or by introducing them into the body, by vascular or hypodermic injection, or by direct introduction into the organs or cavities;

(9) Funeral directing means (a) counseling families or next of kin in regard to the conduct of a funeral service for a dead human body for burial, disposition, or cremation or directing or supervising burial, disposition, or cremation of dead human bodies, (b) providing for or maintaining a funeral establishment, or (c) the act of representing oneself as or using in connection with one's name the title of funeral director, mortician, or any other title implying that he or she is engaged in the business of funeral directing;

(10) Funeral establishment means a place of business situated at a specific street address or location devoted to the care and preparation of dead human bodies for burial, disposition, or cremation or to conducting or arranging funeral services for dead human bodies;

(11) Licensee means a person licensed by the department as a funeral director and embalmer on or after January 1, 1994, or a person licensed as a funeral director or embalmer prior to January 1, 1994;

(12) Licensure examination means a national standardized examination, the state jurisprudence examination, and the vital statistic forms examination; and

(13) Supervision means the direct oversight or the easy availability of the supervising funeral director and embalmer. The first twenty-five funeral assists and embalmings shall be completed under direct onsite supervision of the supervising funeral director and embalmer.

Source: Laws 1927, c. 167, § 92, p. 479; C.S.1929, § 71-1301; Laws 1931, c. 123, § 1, p. 355; C.S.Supp.,1941, § 71-1301; R.S.1943, § 71-194; Laws 1957, c. 293, § 1, p. 1052; R.S.1943, (1990), § 71-194; Laws 1993, LB 187, § 13; Laws 1996, LB 1044, § 557; Laws 1999, LB 828, § 152; Laws 2003, LB 95, § 35; Laws 2007, LB296, § 465; Laws 2007, LB463, § 538.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 538, and transferred to section 38-1402 operative on December 1, 2008.

71-1302 Transferred to section 38-1414.

71-1303 Transferred to section 38-1415.

71-1304 Transferred to section 38-1416.

71-1305 Transferred to section 38-1417.

71-1306 Transferred to section 38-1418.

71-1326 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1327 Transferred to section 38-1419.

71-1327.01 Transferred to section 38-1420.

71-1329 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1331 Transferred to section 38-1423.

71-1332 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1333 Transferred to section 38-1424.

71-1333.01 Application for license; disciplinary actions; notice; hearing; procedure; appeal; director; powers; revocation or suspension; effect; reinstatement; civil penalty. (1) The department shall deny an application for a license as a funeral establishment or branch establishment, revoke or suspend a license, or refuse renewal of such a license on any of the following grounds:

(a) Conviction of any crime involving moral turpitude;

(b) Obtaining a license as a funeral establishment or a branch establishment by false representation or fraud;

(c) Operating a funeral establishment or branch establishment without a manager responsible for the operations of the establishment;

(d) A conviction of a violation of any of the provisions of sections 71-147, 71-148, 71-1301 to 71-1306, and 71-1326 to 71-1354;

(e) Unprofessional conduct, which is hereby defined to include (i) misrepresentation or fraud in the conduct of a funeral establishment or branch establishment or (ii) aiding or abetting an unlicensed person to practice funeral directing and embalming; or

(f) Violation of the rules and regulations governing the practice of funeral directing and embalming.

(2) If the department determines to deny the application for a license as or to revoke, suspend, or refuse renewal of the license of a funeral establishment or branch establishment, it shall send to the applicant or licensee, by certified mail, a notice setting forth the particular

reasons for the determination. The denial, revocation, suspension, or refusal of renewal shall become final thirty days after the mailing of the notice unless the applicant or licensee, within such thirty-day period, requests a hearing in writing. The applicant or licensee shall be given a fair hearing before the department and may present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed or set aside and a copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by certified mail to the applicant or licensee. The decision shall become final thirty days after a copy of such decision is mailed unless the applicant or licensee within such thirty-day period appeals the decision pursuant to section 71-1333.03. The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed a fee at a rate prescribed by the rules and regulations of the department.

(3) The proceeding shall be summary in its nature and triable as an equity action. Affidavits may be received in evidence in the discretion of the department. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party. Upon the completion of any hearing, the Director of Public Health may, through entry of an order, exercise any or all of the following powers:

- (a) Issue a censure against the manager;
- (b) Place the manager on probation;
- (c) Place a limitation or limitations on the license and upon the right of the manager to operate a funeral establishment or branch establishment to the extent, scope, or type of operation, for such time, and under such conditions as the director finds necessary and proper. The director shall consult with the board in all instances prior to issuing an order of limitation;
- (d) Impose a civil penalty not to exceed twenty thousand dollars;
- (e) Enter an order of suspension of the license;
- (f) Enter an order of revocation of the license; or
- (g) Dismiss the action.

(4) The manager of a funeral establishment or branch establishment shall not operate such establishment after its license is revoked or during the time for which it is suspended. If a funeral establishment or branch establishment license is suspended, the suspension shall be for a definite period of time to be fixed by the Director of Public Health. Such license shall be automatically reinstated upon the expiration of such period if the current renewal fees have been paid. If such license is revoked, such revocation shall be permanent, except that at any time after the expiration of two years application may be made for reinstatement of any manager whose funeral establishment or branch establishment license has been revoked. Such application shall be addressed to the director but may not be received or filed by him or her unless accompanied by a written recommendation of reinstatement by the board.

(5) The amount of any civil penalty assessed under this section shall be based on the severity of the violation. If any violation is a repeated or continuing violation, each violation or each day a violation continues shall constitute a separate violation for the purpose of computing the applicable civil penalty, if any. The department may adopt and promulgate the necessary rules and regulations concerning notice and hearing of such application. Any civil penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The department shall remit any collected civil penalty to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1993, LB 187, § 26; Laws 1996, LB 1044, § 558; Laws 1999, LB 828, § 154; Laws 2007, LB296, § 466; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-1333.02 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1333.03 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1339 Transferred to section 38-1425.

71-1340 Final disposition; instructions; remains of deceased person; disposition; liability. A decedent, prior to his or her death, may direct the preparation for the final disposition of his or her remains by written instructions. If such instructions are in a will or other written instrument, the decedent may direct that the whole or any part of such remains be given to a teaching institution, university, college, or legally licensed hospital, to the Director of Public Health, or to or for the use of any nonprofit blood bank, artery bank, eye bank, or other therapeutic service operated by any agency approved by the director under rules and regulations established by the director. The person or persons otherwise entitled to control the disposition of the remains under this section shall faithfully carry out the directions of the decedent.

If such instructions are contained in a will or other written instrument, they shall be immediately carried out, regardless of the validity of the will in other respects or of the fact that the will may not be offered for or admitted to probate until a later date.

This section shall be administered and construed to the end that such expressed instructions of any person shall be faithfully and promptly performed.

A funeral director and embalmer, physician, or cemetery authority shall not be liable to any person or persons for carrying out such instructions of the decedent, and any teaching institution, university, college, or legally licensed hospital or the Director of Public Health

shall not be liable to any person or persons for accepting the remains of any deceased person under a will or other written instrument as set forth in this section.

Source: Laws 1959, c. 325, § 2, p. 1187; Laws 1993, LB 187, § 30; Laws 1996, LB 1044, § 559; Laws 2003, LB 95, § 37; Laws 2007, LB296, § 467; Laws 2007, LB463, § 562.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 562, and transferred to section 38-1426 operative on December 1, 2008.

71-1341 Autopsy; written authorization; removal of organs; when performed. A written authorization for an autopsy given by the survivor or survivors, as enumerated in section 71-1339, having the right to control the disposition of remains may, subject to section 23-1824 and when not inconsistent with any directions given by the decedent pursuant to section 71-1340, include authorization for the removal of any specifically named organ or organs for therapeutic or scientific purposes. Pursuant to any such written authorization, any structure or organ may be given to the Director of Public Health or to any other therapeutic service operated by any nonprofit agency approved by the director, including, but not limited to, a teaching institution, university, college, legally licensed hospital, nonprofit blood bank, nonprofit artery bank, nonprofit eye bank, or nationally recognized nonprofit hormone and pituitary program. The person or persons performing any autopsy shall do so within a reasonable time and without delay and shall not exceed the removal permission contained in such written authorization, and the remains shall not be significantly altered in external appearance nor shall any portion thereof be removed for purposes other than those expressly permitted in this section.

Source: Laws 1959, c. 325, § 3, p. 1188; Laws 1959, c. 326, § 2, p. 1189; Laws 1985, LB 130, § 1; Laws 1996, LB 1044, § 560; Laws 1999, LB 46, § 6; Laws 2007, LB296, § 468; Laws 2007, LB463, § 563.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 563, and transferred to section 38-1427 operative on December 1, 2008.

71-1345 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-1346 Transferred to section 38-1428.

71-1354 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

(b) CREMATION OF HUMAN REMAINS ACT

71-1356 Terms, defined. For purposes of the Cremation of Human Remains Act, unless the context otherwise requires:

(1) Alternative container means a container in which human remains are placed in a cremation chamber for cremation;

(2) Authorizing agent means a person vested with the right to control the disposition of human remains pursuant to section 38-1425;

(3) Casket means a rigid container made of wood, metal, or other similar material, ornamented and lined with fabric, which is designed for the encasement of human remains;

(4) Cremated remains means the residue of human remains recovered after cremation and the processing of such remains by pulverization, leaving only bone fragments reduced to unidentifiable dimensions, and the unrecoverable residue of any foreign matter, such as eyeglasses, bridgework, or other similar material, that was cremated with the human remains;

(5) Cremated remains receipt form means a form provided by a crematory authority to an authorizing agent or his or her representative that identifies cremated remains and the person authorized to receive such remains;

(6) Cremation means the technical process that uses heat and evaporation to reduce human remains to bone fragments;

(7) Cremation chamber means the enclosed space within which a cremation takes place;

(8) Crematory means a building or portion of a building which contains a cremation chamber and holding facility;

(9) Crematory authority means the legal entity subject to licensure by the department to maintain and operate a crematory and perform cremation;

(10) Crematory operator means a person who is responsible for the operation of a crematory;

(11) Delivery receipt form means a form provided by a funeral establishment to a crematory authority to document the receipt of human remains by such authority for the purpose of cremation;

(12) Department means the Division of Public Health of the Department of Health and Human Services;

(13) Director means the Director of Public Health of the Division of Public Health;

(14) Funeral director has the same meaning as in section 71-507;

(15) Funeral establishment has the same meaning as in section 38-1411;

(16) Holding facility means the area of a crematory designated for the retention of human remains prior to cremation and includes a refrigerated facility;

(17) Human remains means the body of a deceased person, or a human body part, in any stage of decomposition and includes limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research;

(18) Permanent container means a receptacle made of durable material for the long-term placement of cremated remains; and

(19) Temporary container means a receptacle made of cardboard, plastic, or other similar material in which cremated remains are placed prior to the placement of such remains in an urn or other permanent container.

Source: Laws 2003, LB 95, § 2; Laws 2007, LB296, § 469; Laws 2007, LB463, § 1186.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 469, with LB 463, section 1186, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-1357 Crematory; license required. A crematory shall not be established, operated, or maintained in this state except by a crematory authority licensed by the department under the Cremation of Human Remains Act. The department shall issue a license to a crematory authority that satisfies the requirements for licensure under the act. Human remains shall not be cremated in this state except at a crematory operated by a crematory authority licensed under the act.

Source: Laws 2003, LB 95, § 3; Laws 2007, LB463, § 1187.
Operative date December 1, 2008.

71-1361 Crematory; change in location, ownership, or name; application; requirements; fee. (1) A crematory authority desiring to relocate a crematory shall file a written application with the department at least thirty days prior to the designated date of such relocation. The application shall be accompanied by a fee determined by the department in rules and regulations.

(2) A crematory authority desiring to change ownership of a crematory shall file a written application with the department at least thirty days prior to the designated date of such change. The application shall be accompanied by a fee determined by the department in rules and regulations.

(3) A crematory authority desiring to change its name shall file a written application with the department at least thirty days prior to such change. The application shall be accompanied by a fee determined by the department in rules and regulations.

Source: Laws 2003, LB 95, § 7; Laws 2007, LB463, § 1188.
Operative date December 1, 2008.

71-1363 Licensure; fees. (1) The fee for an initial or renewal license as a crematory authority shall include a fee determined by the department in rules and regulations.

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

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

(4) The department shall collect a fee of twenty-five dollars for a certified statement that a crematory authority is licensed in this state and a fee of five dollars for verification that a crematory authority is licensed in this state.

(5) The department shall adopt and promulgate rules and regulations for the establishment of fees under the Cremation of Human Remains Act.

(6) The department shall collect fees authorized under the act and shall remit such fees to the State Treasurer for credit to the Health and Human Services Cash Fund. Such fees shall only be used for activities related to the licensure of crematory authorities.

Source: Laws 2003, LB 95, § 9; Laws 2007, LB296, § 470; Laws 2007, LB463, § 1189.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 470, with LB 463, section 1189, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-1367 Deny or refuse to renew license; disciplinary action; grounds. The department may deny or refuse to renew a license under the Cremation of Human Remains Act or take disciplinary action against a crematory authority licensed under the act as provided in section 71-1368 on any of the following grounds:

(1) Violation of the Cremation of Human Remains Act or rules and regulations adopted and promulgated under the act;

(2) Conviction of any crime involving moral turpitude;

(3) Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony and which has a rational connection with the fitness or capacity of the crematory authority to operate a crematory;

(4) Conviction of a violation pursuant to section 71-1371;

(5) Obtaining a license as a crematory authority by false representation or fraud;

(6) Misrepresentation or fraud in the operation of a crematory; or

(7) Failure to allow access by an agent or employee of the Department of Health and Human Services to a crematory operated by the crematory authority for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of such department.

Source: Laws 2003, LB 95, § 13; Laws 2007, LB296, § 471.
Operative date July 1, 2007.

71-1368 Disciplinary actions; fine; disposition. (1) The department may impose any one or more of the following types of disciplinary action against a crematory authority licensed under the Cremation of Human Remains Act:

(a) A fine not to exceed five hundred dollars per violation;

(b) A limitation on the license and upon the right of the crematory authority to operate a crematory to the extent, scope, or type of operation, for such time, and under such conditions as the director finds necessary and proper;

(c) Placement of the license on probation for a period not to exceed two years during which the crematory may continue to operate under terms and conditions fixed by the order of probation;

(d) Suspension of the license for a period not to exceed two years during which the crematory may not operate; and

(e) Revocation and permanent termination of the license.

(2) Any fine imposed and unpaid under the Cremation of Human Remains Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the crematory is located. The department shall remit fines to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2003, LB 95, § 14; Laws 2007, LB296, § 472.
Operative date July 1, 2007.

71-1373 Cremation; right to authorize. The right to authorize the cremation of human remains and the final disposition of the cremated remains, except in the case of a minor subject to section 23-1824 and unless other directions have been given by the decedent in the form of a testamentary disposition or a pre-need contract, vests pursuant to section 38-1425.

Source: Laws 2003, LB 95, § 19; Laws 2007, LB463, § 1190.
Operative date December 1, 2008.

ARTICLE 14

MEDICALLY HANDICAPPED CHILDREN

Section.

71-1405. Medically handicapped child; birth; duty of attendant to report.

71-1405 Medically handicapped child; birth; duty of attendant to report. (1) Within thirty days after the date of the birth of any child born in this state with visible congenital deformities, the physician, certified nurse midwife, or other person in attendance upon such birth shall prepare and file with the Department of Health and Human Services a statement setting forth such visible congenital deformity. The form of such statement shall be prepared by the department and shall be a part of the birth report furnished by the department.

(2) For purposes of this section, congenital deformities include a cleft lip, cleft palate, hernia, congenital cataract, or disability resulting from congenital or acquired heart disease, or any congenital abnormality or orthopedic condition that can be cured or materially improved. The orthopedic condition or deformity includes any deformity or disease of childhood generally recognized by the medical profession, and it includes deformities resulting from burns.

Source: Laws 1937, c. 190, § 5, p. 755; Laws 1941, c. 139, 1, p. 549; C.S.Supp.,1941, § 71-3405; R.S.1943, § 71-1405; Laws 1996, LB 1044, § 563; Laws 1997, LB 307, § 169; Laws 2002, LB 93, § 6; Laws 2005, LB 256, § 35; Laws 2007, LB296, § 473.
Operative date July 1, 2007.

Cross Reference

Birth defects, reports, see section 71-648.

ARTICLE 16

LOCAL HEALTH SERVICES

(a) HEALTH DISTRICTS IN COUNTIES HAVING
A POPULATION OF MORE THAN 200,000

Section.

71-1617. Rules and regulations; standards.

(b) LOCAL PUBLIC HEALTH DEPARTMENTS

71-1626. Terms, defined.

71-1628. County board; powers.

71-1628.05. Report.

71-1628.06. Core public health functions; personnel.

71-1628.07. Satellite office of minority health; duties.

71-1630. Local boards of health; membership; terms; vacancies; duties.

71-1631. Local boards of health; meetings; expenses; powers and duties; rules and regulations; pension and retirement plans.

71-1635. Health department; establishment; other health agencies abolished; exception; city-county health department; control by department.

(c) COMMUNITY AND HOME HEALTH SERVICES

71-1637. Political subdivision; employment and contracts authorized; duties; tax to support; limitation; section, how construed.

(a) HEALTH DISTRICTS IN COUNTIES HAVING
A POPULATION OF MORE THAN 200,000

71-1617 Rules and regulations; standards. In formulating rules, regulations, or other orders for the establishment of a health district or the carrying out of the purpose of sections 71-1601 to 71-1625 or for the management or control of any property which may come under the care or management of the board, the board and the director selected pursuant to section 71-1616 shall conform at least to the minimum requirements, rules, and regulations of the Department of Health and Human Services and the principles of public health and sanitation and the remedial care and treatment of the indigent sick people recognized by the medical profession.

Source: Laws 1939, c. 92, § 13, p. 403; C.S.Supp.,1941, § 71-3613; R.S.1943, § 71-1617; Laws 1996, LB 1044, § 567; Laws 2007, LB296, § 474.
Operative date July 1, 2007.

(b) LOCAL PUBLIC HEALTH DEPARTMENTS

71-1626 Terms, defined. For purposes of sections 71-1626 to 71-1636:

(1) Core public health functions means assessment, policy development, and assurance designed to protect and improve the health of persons within a geographically defined community by (a) emphasizing services to prevent illness, disease, and disability, (b) promoting effective coordination and use of community resources, and (c) extending health services into the community, including public health nursing, disease prevention and control, public health education, and environmental health services;

(2) County, district, or city-county health department means a governmental entity approved by the Department of Health and Human Services as a local full-time public health service which (a) utilizes local, state, federal, and other funds or any combination thereof, (b) employs qualified public health medical, nursing, environmental health, health education, and other essential personnel who work under the direction and supervision of a full-time qualified medical director or of a full-time qualified lay administrator and are assisted at least part time by at least one medical consultant who shall be a licensed physician, and (c) is operated in conformity with the rules, regulations, and policies of the Department of Health and Human Services. The medical director or lay administrator shall be called the health director; and

(3) Local public health department means a county, district, or city-county health department.

Source: Laws 1943, c. 152, § 1, p. 554; R.S.1943, § 71-1626; Laws 1972, LB 1497, § 1; Laws 1994, LB 1223, § 34; Laws 1996, LB 1044, § 568; Laws 2001, LB 692, § 2; Laws 2004, LB 1005, § 62; Laws 2007, LB296, § 475.
Operative date July 1, 2007.

71-1628 County board; powers. The county board of any county may (1) make an agreement with the Department of Health and Human Services relative to the expenditure of local, state, federal, and other funds or any combination thereof, available for public health in such county; (2) after notice and public hearing, establish and maintain a single full-time local health department for such county and any other counties which combine for that purpose and, pursuant to such combination or agreement, such counties may cooperate with one another and the Department of Health and Human Services and may contribute to a joint fund in carrying out the purpose and intent of sections 71-1626 to 71-1636. The duration and nature of such agreement shall be evidenced by the resolutions of the county boards of such counties, and such agreement shall be submitted to and approved by the Department of Health and Human Services; or (3) cooperate with any city in the establishment and maintenance of a city-county health department as provided in section 71-1630. The duration and nature of such an agreement shall be evidenced by resolutions of the city council of the city and the county board participating, and such agreement shall be submitted to and approved by the Department of Health and Human Services. A city-county health department shall be administered as provided in the agreement between the county and the city and shall be considered a state-approved, local, full-time public health service.

Source: Laws 1943, c. 152, § 3, p. 554; R.S.1943, § 71-1628; Laws 1949, c. 206, § 1(1), p. 591; Laws 1972, LB 1497, § 3; Laws 1994, LB 1223, § 36; Laws 1996, LB 1044, § 569; Laws 1997, LB 185, § 1; Laws 2007, LB296, § 476.
Operative date July 1, 2007.

71-1628.05 Report. Each local public health department shall prepare an annual report regarding the core public health functions carried out by the department in the prior fiscal year. The report shall be submitted to the Department of Health and Human Services by October 1. The Department of Health and Human Services shall compile the reports and submit the results to the Health and Human Services Committee of the Legislature by December 1.

Source: Laws 2001, LB 692, § 8; Laws 2005, LB 301, § 35; Laws 2007, LB296, § 477.
Operative date July 1, 2007.

71-1628.06 Core public health functions; personnel. The Department of Health and Human Services shall employ two full-time persons with expertise in the public health field to provide technical expertise in carrying out core public health functions and essential elements and coordinate the dissemination of materials to the local public health departments.

Source: Laws 2001, LB 692, § 9; Laws 2005, LB 301, § 36; Laws 2007, LB296, § 478.
Operative date July 1, 2007.

71-1628.07 Satellite office of minority health; duties. (1) The Department of Health and Human Services shall establish a satellite office of minority health in each congressional district to coordinate and administer state policy relating to minority health. Each office shall implement a minority health initiative in counties with a minority population of at least five percent of the total population of the county as determined by the most recent federal decennial census which shall target, but not be limited to, infant mortality, cardiovascular disease, obesity, diabetes, and asthma.

(2) Each office shall prepare an annual report regarding minority health initiatives implemented in the immediately preceding fiscal year. The report shall be submitted to the department by October 1. The department shall submit such reports to the Health and Human Services Committee of the Legislature by December 1.

Source: Laws 2001, LB 692, § 10; Laws 2003, LB 412, § 1; Laws 2005, LB 301, § 37; Laws 2007, LB296, § 479.
Operative date July 1, 2007.

71-1630 Local boards of health; membership; terms; vacancies; duties. (1) When a health department has been established by the county board of a county and approved by the Department of Health and Human Services as a county health department, the county board of such county shall appoint a board of health which shall consist of the following members: (a) One member of the county board; (b) one dentist; (c) one physician; and (d) six public-spirited men or women interested in the health of the community. The physician and dentist shall each serve an initial term of three years. Three public-spirited men or women shall each serve an initial term of three years, and three public-spirited men or women shall each serve an initial term of two years. After the initial terms of office expire, each new appointment shall be for a term of three years. Appointments to fill any vacancies shall be for the unexpired term of the member whose term is being filled by such appointment. A county association or society

of dentists or physicians or its managing board may submit each year to the county board a list of three persons of recognized ability in such profession. If such a list is submitted, the county board, in making an appointment for such profession, shall consider the names on the list and may appoint one of the persons so named.

(2) When a district health department has been established by a joint resolution of the county boards of each county in a district health department, the county boards of such district shall meet and establish a district board of health with due consideration for a fair and equitable representation from the entire area to be served. The district board of health shall consist of the following members: (a) One member of each county board in the district, (b) at least one physician, (c) at least one dentist, and (d) one or more public-spirited men or women interested in the health of the community from each county in the district. One-third of the members shall be appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years. After their terms of office expire, each new appointment shall be for a term of three years. Appointments to fill any vacancies shall be for the unexpired terms. A county association or society of dentists or physicians or its managing board may submit each year to the county boards a list of three persons of recognized ability in such profession. If such a list is submitted, the county boards, in making an appointment for such profession, shall consider the names on the list and may appoint one of the persons so named.

(3) Except as provided in subsection (4) of this section, when the county board of any county and the city council of any city located in such county have executed an agreement, approved by the Department of Health and Human Services, for maintaining a city-county health department, the city and county shall establish a city-county board of health. It shall consist of the following members selected by a majority vote of the city council and the county board, with due consideration to be given in an endeavor to secure a fair and equitable representation from the entire area to be served: (a) One representative of the county board, (b) one representative from the city council, (c) one physician, (d) one dentist, and (e) five public-spirited men or women, not employed in the health industry or in the health professions, who are interested in the health of the community. One-third of its members shall be appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years. After their terms of office expire, each new appointment shall be for a period of three years. A county association or society of dentists or physicians or its managing board may submit each year to the city council and the county board a list of three persons of recognized ability in such profession. If such a list is submitted, the city council and the county board, in making an appointment for such profession, shall consider the names on the list and may appoint one of the persons so named.

(4)(a) When the county board of any county having a population of more than two hundred thousand inhabitants and the city council of any city located in such county have executed an agreement, approved by the Department of Health and Human Services, for maintaining a city-county health department on or after January 1, 1997, the city and county shall establish a city-county board of health. The board shall consist of the following members to be appointed by the mayor with the consent of the city council and county board: One representative of

the county board, one representative from the city council, one physician, one dentist, and five public-spirited persons who are interested in the health of the community. Three of the members shall be appointed for terms of one year, three for terms of two years, and three for terms of three years. After the initial terms of office expire, each successor member shall be appointed for a term of three years. The physician and dentist members shall be appointed as provided in this subdivision. The mayor shall invite the local county association or society of dentists or physicians or its managing board to timely submit to the mayor a list of three persons of recognized ability in the profession. A list is timely submitted if it is submitted within sixty days after the mayor's invitation. If the list is not timely submitted, the mayor may consider the list timely submitted at any time prior to making an appointment, otherwise the mayor shall appoint a person of recognized ability in the profession. If the list is timely submitted, the mayor shall consider the names on the list and shall either appoint one of the persons on the list or invite a list of three new names using the process provided in this subdivision.

(b) The board of health shall, immediately after appointment, meet and organize by the election of one of its own members as president and one as vice president. The board members may elect such other officers as they deem necessary and may adopt and promulgate rules for the guidance of the board which are not inconsistent with law or the agreement creating the board. If any board member resigns or ceases to meet the requirements for eligibility on the board, or if there is any other vacancy on the board, the mayor shall appoint another representative to serve for the member's unexpired term subject to consent by a majority vote of both the city council and the county board. Any appointment to fill a vacancy on the board shall be for the unexpired term of the member whose vacancy is being filled.

(c) The board of health shall have the following duties:

(i) Assessment of community health status and available resources for health matters, including collecting and analyzing relevant data and annually reporting and making recommendations on improving public health matters to the mayor, city council, and county board;

(ii) Policy development for proposals before the board of health, the city council, and the county board to support and improve public health, including appointing, with the approval of the mayor, city council, and county board, advisory committees to the board of health to facilitate community development functions and coalition building related to public health and adopting and approving official health department policies consistent with applicable law and approved by the affirmative vote of not less than five board members at a regular meeting of the board in the following areas:

(A) Community health services and health promotion and outreach, specifically including policies related to the following:

(I) Client services and fees;

(II) Standing orders, supervision, screening, and emergency and referral protocols and procedures;

- (III) Monitoring and reporting; and
- (IV) Communicable disease investigation, immunization, vaccination, testing, and prevention measures, including measures to arrest the progress of communicable diseases;
- (B) Environmental health, specifically including policies related to the following:
 - (I) Permitting, inspection, and enforcement;
 - (II) Monitoring, sampling, and reporting;
 - (III) Technical assistance and plan review; and
 - (IV) Prevention measures;
- (C) Investigating and controlling diseases and injury, specifically including policies related to the following:
 - (I) Permitting, inspection, and enforcement;
 - (II) Monitoring, sampling, and reporting;
 - (III) Technical assistance and plan review; and
 - (IV) Prevention measures; and
 - (D) Other health matters as may be requested by the city council or county board; and
- (iii) Assurance that needed services are available through public or private sources in the community, including:
 - (A) Acting in an advisory capacity to review and recommend changes to ordinances, resolutions, and resource allocations before the city council or county board related to health matters;
 - (B) Annually reviewing and recommending changes in the proposed budget for resource allocations related to the health department as provided in the city-county agreement; and
 - (C) Monitoring and reviewing the enforcement of laws and regulations of the board of health, city council, and county board related to public health in the community.
- (d) The mayor of the city shall appoint, with the approval of the board of health, city council, and county board, the health director of the health department. The health director shall be a member of the unclassified service of the city under the direction and supervision of the mayor. The health director shall be well-trained in public health work, but he or she need not be a graduate of an accredited medical school. If the health director is not a graduate of an accredited medical school, the health director shall be assisted at least part time by at least one medical consultant who is a licensed physician. The mayor shall submit the health department budget to the city council and county board. The mayor shall also provide budget information to the board of health with sufficient time to allow such board to consider such information. The mayor may enter into contracts and accept grants on behalf of the health department. The mayor may terminate the health director with approval of a majority vote of the city council, the county board, and the board of health. The health director shall:
 - (i) Provide administrative supervision of the health department;
 - (ii) Make all necessary sanitary and health investigations and inspections;
 - (iii) Investigate the existence of any contagious or infectious disease and adopt measures to arrest the progress of the disease;

(iv) Distribute free, as the local needs may require, all vaccines, drugs, serums, and other preparations obtained from the Department of Health and Human Services or otherwise provided for public health purposes;

(v) Give professional advice and information to school authorities and other public agencies on all matters pertaining to sanitation and public health;

(vi) Inform the board of health when the city council or county board is considering proposals related to health matters or has otherwise requested recommendations from the board of health;

(vii) Inform the board of health of developments in the field of public health and of any need for updating or adding to or deleting from the programs of the health department; and

(viii) Perform duties and functions as otherwise provided by law.

Source: Laws 1943, c. 152, § 5, p. 557; R.S.1943, § 71-1630; Laws 1969, c. 151, § 3, p. 711; Laws 1971, LB 43, § 2; Laws 1972, LB 1497, § 4; Laws 1976, LB 716, § 1; Laws 1978, LB 580, § 1; Laws 1979, LB 198, § 1; Laws 1994, LB 1223, § 41; Laws 1996, LB 1044, § 570; Laws 1997, LB 185, § 3; Laws 2007, LB296, § 480.
Operative date July 1, 2007.

71-1631 Local boards of health; meetings; expenses; powers and duties; rules and regulations; pension and retirement plans. Except as provided in subsection (4) of section 71-1630, the board of health of each county, district, or city-county health department organized under sections 71-1626 to 71-1636 shall, immediately after appointment, meet and organize by the election of one of its own members as president, one as vice president, and another as secretary and, either from its own members or otherwise, a treasurer and shall have the power set forth in this section. The board may elect such other officers as it may deem necessary and may adopt and promulgate such rules and regulations for its own guidance and for the government of such health department as may be necessary, not inconsistent with sections 71-1626 to 71-1636. The board of health shall, with the approval of the county board and the municipality, whenever a city is a party in such a city-county health department:

(1) Select the health director of such department who shall be (a) well-trained in public health work though he or she need not be a graduate of an accredited medical school, but if he or she is not such a graduate, he or she shall be assisted at least part time by at least one medical consultant who shall be a licensed physician, (b) qualified in accordance with the state personnel system, and (c) approved by the Department of Health and Human Services;

(2) Hold an annual meeting each year, at which meeting officers shall be elected for the ensuing year;

(3) Hold meetings quarterly each year;

(4) Hold special meetings upon a written request signed by two of its members and filed with the secretary;

(5) Provide suitable offices, facilities, and equipment for the health director and assistants and their pay and traveling expenses in the performance of their duties, with mileage to be computed at the rate provided in section 81-1176;

(6) Publish, on or soon after the second Tuesday in July of each year, in pamphlet form for free distribution, an annual report showing (a) the condition of its trust for each year, (b) the sums of money received from all sources, giving the name of any donor, (c) how all money has been expended and for what purpose, and (d) such other statistics and information with regard to the work of such health department as may be of general interest;

(7) Enact rules and regulations, subsequent to public hearing held after due public notice of such hearing by publication at least once in a newspaper having general circulation in the county or district at least ten days prior to such hearing, and enforce the same for the protection of public health and the prevention of communicable diseases within its jurisdiction, subject to the review and approval of such rules and regulations by the Department of Health and Human Services;

(8) Make all necessary sanitary and health investigations and inspections;

(9) In counties having a population of more than three hundred thousand inhabitants, enact rules and regulations for the protection of public health and the prevention of communicable diseases within the district, except that such rules and regulations shall have no application within the jurisdictional limits of any city of the metropolitan class and shall not be in effect until (a) thirty days after the completion of a three-week publication in a legal newspaper, (b) approved by the county attorney with his or her written approval attached thereto, and (c) filed in the office of the county clerk of such county;

(10) Investigate the existence of any contagious or infectious disease and adopt measures, with the approval of the Department of Health and Human Services, to arrest the progress of the same;

(11) Distribute free as the local needs may require all vaccines, drugs, serums, and other preparations obtained from the Department of Health and Human Services or purchased for public health purposes by the county board;

(12) Upon request, give professional advice and information to all city, village, and school authorities on all matters pertaining to sanitation and public health;

(13) Fix the salaries of all employees, including the health director. Such city-county health department may also establish an independent pension plan, retirement plan, or health insurance plan or, by agreement with any participating city or county, provide for the coverage of officers and employees of such city-county health department under such city or county pension plan, retirement plan, or health insurance plan. Officers and employees of a county health department shall be eligible to participate in the county pension plan, retirement plan, or health insurance plan of such county. Officers and employees of a district health department formed by two or more counties shall be eligible to participate in the county retirement plan unless the district health department establishes an independent pension plan or retirement plan for its officers or employees;

(14) Establish fees for the costs of all services, including those services for which third-party payment is available; and

(15) In addition to powers conferred elsewhere in the laws of the state and notwithstanding any other law of the state, implement and enforce an air pollution control program under

subdivision (23) of section 81-1504 or subsection (1) of section 81-1528, which program shall be consistent with the federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq. Such powers shall include without limitation those involving injunctive relief, civil penalties, criminal fines, and burden of proof. Nothing in this section shall preclude the control of air pollution by resolution, ordinance, or regulation not in actual conflict with the state air pollution control regulations.

Source: Laws 1943, c. 152, § 6, p. 558; R.S.1943, § 71-1631; Laws 1953, c. 249, § 1, p. 852; Laws 1955, c. 275, § 1, p. 871; Laws 1963, c. 401, § 1, p. 1286; Laws 1967, c. 449, § 3, p. 1394; Laws 1969, c. 151, § 5, p. 713; Laws 1972, LB 1497, § 6; Laws 1973, LB 285, § 1; Laws 1979, LB 198, § 2; Laws 1981, LB 204, § 120; Laws 1992, LB 860, § 3; Laws 1992, LB 1257, § 74; Laws 1993, LB 623, § 2; Laws 1996, LB 1011, § 28; Laws 1996, LB 1044, § 571; Laws 1997, LB 185, § 4; Laws 2006, LB 1019, § 6; Laws 2007, LB296, § 481.
Operative date July 1, 2007.

71-1635 Health department; establishment; other health agencies abolished; exception; city-county health department; control by department. When the county board of any county or counties creates a health department as provided by sections 71-1626 to 71-1636, every other local, municipal, or county public health agency or department, except city or county hospitals, may be abolished, and such county or district health department may be given full control over all health matters in the county or counties, including all municipalities in the county in conformity with the rules, regulations, and policies of the Department of Health and Human Services. When a city has joined in the establishment of a city-county health department, such city-county health department may be given such control over all health matters in the city as may be provided by agreement between the county and the city with the approval of the Department of Health and Human Services. If the health department in a county or city is changed, any lawful ordinance, resolution, regulation, policy, or procedure relating to any of the functions conferred by sections 71-1626 to 71-1636 of the former health department shall remain in full force and effect until it is repealed or replaced or until it conflicts with a subsequently enacted measure.

Source: Laws 1943, c. 152, § 10, p. 560; R.S.1943, § 71-1635; Laws 1967, c. 449, § 5, p. 1396; Laws 1996, LB 1044, § 572; Laws 1997, LB 185, § 7; Laws 2007, LB296, § 482.
Operative date July 1, 2007.

(c) COMMUNITY AND HOME HEALTH SERVICES

71-1637 Political subdivision; employment and contracts authorized; duties; tax to support; limitation; section, how construed. (1) Any city by its mayor and council or by its commission, any village by its village board, any county by its board of supervisors or commissioners, or any township by its electors shall have power to employ a visiting community nurse, a home health nurse, or a home health agency defined in section 71-417 and the rules and regulations adopted and promulgated under the Health Care Facility Licensure Act. Such nurses or home health agency shall do and perform such duties as the city, village, county, or township, by their officials and electors, shall prescribe and direct. The city, village,

county, or township shall have the power to levy a tax, not exceeding three and five-tenths cents on each one hundred dollars on the taxable valuation of the taxable property of such city, village, county, or township, for the purpose of paying the salary and expenses of such nurses or home health agency. The levy shall be subject to sections 77-3442 and 77-3443. The city, village, county, or township shall have the power to constitute and empower such nurses or home health agency with police power to carry out the order of such city, village, county, or township.

(2) The governing body of any city, village, county, or township may contract with any visiting nurses association, licensed hospital home health agency, or other licensed home health agency, including those operated by the Department of Health and Human Services, to perform the duties contemplated in subsection (1) of this section, subject to the supervision of the governing body, and may pay the expense of such contract out of the general funds of the city, village, county, or township.

(3) Nothing in this section shall be construed to allow any city, village, county, township, nurse, or home health agency to (a) avoid the requirements of individual licensure, (b) perform any service beyond the scope of practice of licensure or beyond the limits of licensure prescribed by the Health Care Facility Licensure Act, or (c) violate any rule or regulation adopted and promulgated by the Department of Health and Human Services.

Source: Laws 1917, c. 209, § 1, p. 514; C.S.1922, § 8234; C.S.1929, § 71-2406; R.S.1943, § 71-1701; Laws 1973, LB 483, § 1; Laws 1979, LB 187, § 186; R.S.1943, (1986), § 71-1701; Laws 1987, LB 389, § 1; Laws 1989, LB 429, § 1; Laws 1992, LB 719A, § 160; Laws 1996, LB 1044, § 573; Laws 1996, LB 1114, § 64; Laws 1996, LB 1155, § 29; Laws 1997, LB 269, § 32; Laws 1997, LB 608, § 8; Laws 1998, LB 306, § 17; Laws 2000, LB 819, § 98; Laws 2007, LB296, § 483.
Operative date July 1, 2007.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

ARTICLE 17

NURSES

(b) NURSE PRACTITIONER ACT

Section.

- 71-1704. Transferred to section 38-2301.
- 71-1706. Transferred to section 38-2302.
- 71-1707. Nurse practitioner, defined.
- 71-1708. Transferred to section 38-2306.
- 71-1709.01. Transferred to section 38-2307.
- 71-1709.02. Transferred to section 38-2309.
- 71-1710. Department, defined.
- 71-1712. Transferred to section 38-2311.
- 71-1714. Transferred to section 38-2313.
- 71-1716. Transferred to section 38-2308.

- 71-1716.01. Transferred to section 38-2304.
 71-1716.02. Transferred to section 38-2303.
 71-1716.03. Transferred to section 38-2310.
 71-1716.05. Transferred to section 38-2314.
 71-1717. Transferred to section 38-2305.
 71-1721. Transferred to section 38-2315.
 71-1721.07. Repealed. Laws 2007, LB 463, § 1319.
 71-1722. Nurse practitioner; licensure; requirements.
 71-1723. Nurse practitioner; license.
 71-1723.01. Nurse practitioner; right to use title or abbreviation.
 71-1723.02. Nurse practitioner; commencement of practice; requirements; waiver.
 71-1723.03. Transferred to section 38-2323.
 71-1723.04. Transferred to section 38-2320.
 71-1724. Nurse practitioner; license; renewal; requirements.
 71-1724.01. Nurse practitioner; temporary license; requirements.
 71-1724.02. Repealed. Laws 2007, LB 185, § 54.
 71-1725. Repealed. Laws 2007, LB 185, § 54.
 71-1725.01. Repealed. Laws 2007, LB 185, § 54.
 71-1726. Repealed. Laws 2007, LB 185, § 54.
 71-1726.01. Unlicensed person; acts permitted.
 71-1726.02. Prohibited acts; penalty.
- (c) CERTIFIED REGISTERED NURSE ANESTHETIST ACT
- 71-1728. Transferred to section 38-701.
 71-1729. Terms, defined.
 71-1730. Certified registered nurse anesthetist; license; requirements; right to use title or abbreviation.
 71-1731. Certified registered nurse anesthetist; temporary license; requirements.
 71-1734. Certified registered nurse anesthetist; performance of duties.
 71-1735. Certified registered nurse anesthetist; license; renewal.
 71-1736.01. Repealed. Laws 2007, LB 185, § 54.
 71-1736.02. Repealed. Laws 2007, LB 185, § 54.
 71-1736.03. Repealed. Laws 2007, LB 185, § 54.
 71-1737. Prohibited activities; penalty.
- (d) NURSE MIDWIFERY
- 71-1738. Transferred to section 38-601.
 71-1739. Transferred to section 38-602.
 71-1740. Transferred to section 38-603.
 71-1743. Transferred to section 38-605.
 71-1745. Department, defined.
 71-1746. Transferred to section 38-608.

- 71-1747. Transferred to section 38-607.
- 71-1748. Certified nurse midwife, defined.
- 71-1749. Approved certified nurse midwifery education program, defined.
- 71-1750. Transferred to section 38-609.
- 71-1751. Transferred to section 38-610.
- 71-1752. Certified nurse midwife; authorized activities.
- 71-1753. Transferred to section 38-613.
- 71-1754. Transferred to section 38-614.
- 71-1755. Certified nurse midwife; licensure; requirements; temporary license.
- 71-1756. Certified nurse midwife; right to use title or abbreviation.
- 71-1757. License; renewal.
- 71-1758. Repealed. Laws 2007, LB 185, § 54.
- 71-1761. Repealed. Laws 2007, LB 185, § 54.
- 71-1762. Repealed. Laws 2007, LB 185, § 54.
- 71-1763. Transferred to section 38-618.
- 71-1764. Prohibited activities; penalty.
- 71-1765. Unlicensed person; acts permitted.

(f) LICENSED PRACTICAL NURSE-CERTIFIED

- 71-1772. Transferred to section 38-1601.
- 71-1773. Transferred to section 38-1602.
- 71-1774. Terms, defined.
- 71-1775. Transferred to section 38-1621.
- 71-1776. Transferred to section 38-1613.
- 71-1777. Transferred to section 38-1615.
- 71-1778. Transferred to section 38-1616.
- 71-1779. Transferred to section 38-1617.
- 71-1780. Transferred to section 38-1622.
- 71-1781. Transferred to section 38-1623.
- 71-1782. Repealed. Laws 2007, LB 463, § 1319.
- 71-1783. Transferred to section 38-1624.
- 71-1784. Repealed. Laws 2007, LB 463, § 1319.
- 71-1785. Transferred to section 38-1625.
- 71-1787. Repealed. Laws 2007, LB 463, § 1319.
- 71-1788. Repealed. Laws 2007, LB 463, § 1319.
- 71-1789. Transferred to section 38-1614.
- 71-1790. Transferred to section 38-1620.
- 71-1791. Repealed. Laws 2007, LB 463, § 1319.
- 71-1792. Transferred to section 38-1618.
- 71-1793. Repealed. Laws 2007, LB 463, § 1319.
- 71-1794. Repealed. Laws 2007, LB 463, § 1319.

(h) NEBRASKA CENTER FOR NURSING ACT

- 71-1798.01. Board of Nursing; duties.
 71-1799. Nebraska Center for Nursing Board; created; members; terms; powers and duties; expenses.

(i) NURSING STUDENT LOAN ACT

- 71-17,102. Terms, defined.

(j) NURSING FACULTY STUDENT LOAN ACT

- 71-17,109. Terms, defined.
 71-17,113. License renewal; extra fee.

(k) CLINICAL NURSE SPECIALIST PRACTICE ACT

- 71-17,117. Transferred to section 38-901.
 71-17,118. Terms, defined.
 71-17,119. Clinical nurse specialist; licensure; requirements.
 71-17,120. Transferred to section 38-906.
 71-17,121. Clinical nurse specialist; licensure; right to use title or abbreviation.
 71-17,122. Application for licensure; how treated.
 71-17,123. Licenses; expiration; renewal.
 71-17,124. Continuing competency requirements; waiver; when allowed.
 71-17,125. Repealed. Laws 2007, LB 185, § 54.
 71-17,126. Repealed. Laws 2007, LB 185, § 54.
 71-17,127. Repealed. Laws 2007, LB 185, § 54.
 71-17,128. Unlicensed person; acts permitted.
 71-17,129. Prohibited acts; penalty.
 71-17,130. Repealed. Laws 2007, LB 463, § 1319.

(l) ADVANCED PRACTICE REGISTERED NURSE LICENSURE ACT

- 71-17,131. Transferred to section 38-201.
 71-17,132. Transferred to section 38-202.
 71-17,133. Transferred to section 38-203.
 71-17,134. Board of Advanced Practice Registered Nurses; members; qualifications; terms; removal; per diem; expenses.
 71-17,135. Board of Advanced Practice Registered Nurses; duties.
 71-17,136. Transferred to section 38-207.
 71-17,137. License; qualifications; use of title or abbreviation.
 71-17,138. Renewal; requirements.
 71-17,139. Disciplinary actions; grounds; procedure; appeal.
 71-17,140. Lapse of license; conditions; effect; restoration.
 71-17,141. Repealed. Laws 2007, LB 463, § 1319.

(b) NURSE PRACTITIONER ACT

71-1704 Transferred to section 38-2301.

71-1706 Transferred to section 38-2302.

71-1707 Nurse practitioner, defined. Nurse practitioner means a registered nurse certified as described in section 71-1722 and licensed under the Advanced Practice Registered Nurse Licensure Act to practice as a nurse practitioner.

Source: Laws 1981, LB 379, § 4; Laws 1984, LB 724, § 5; Laws 1996, LB 414, § 14; Laws 2000, LB 1115, § 29; Laws 2005, LB 256, § 49; Laws 2007, LB185, § 5; Laws 2007, LB463, § 804.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 804, and transferred to section 38-2312 operative on December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Licensure Act, see section 71-17,131.

71-1708 Transferred to section 38-2306.

71-1709.01 Transferred to section 38-2307.

71-1709.02 Transferred to section 38-2309.

71-1710 Department, defined. Department means the Department of Health and Human Services.

Source: Laws 1981, LB 379, § 7; Laws 1996, LB 1044, § 574; Laws 2000, LB 1115, § 33; Laws 2007, LB296, § 484; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-1712 Transferred to section 38-2311.

71-1714 Transferred to section 38-2313.

71-1716 Transferred to section 38-2308.

71-1716.01 Transferred to section 38-2304.

71-1716.02 Transferred to section 38-2303.

71-1716.03 Transferred to section 38-2310.

71-1716.05 Transferred to section 38-2314.

71-1717 Transferred to section 38-2305.

71-1721 Transferred to section 38-2315.

71-1721.07 Repealed. Laws 2007, LB 463, § 1319.

Operative date December 1, 2008.

71-1722 Nurse practitioner; licensure; requirements. (1) An applicant for licensure under the Advanced Practice Registered Nurse Licensure Act to practice as a nurse practitioner shall have:

(a) A license as a registered nurse in the State of Nebraska or the authority based upon the Nurse Licensure Compact to practice as a registered nurse in Nebraska;

(b) Evidence of having successfully completed a graduate-level program in the clinical specialty area of nurse practitioner practice, which program is accredited by a national accrediting body;

(c) Evidence of having successfully completed thirty contact hours of education in pharmacotherapeutics; and

(d) Proof of having passed an examination pertaining to the specific nurse practitioner role in nursing adopted or approved by the board with the approval of the department. Such examination may include any recognized national credentialing examination for nurse practitioners conducted by an approved certifying body which administers an approved certification program.

(2) If more than five years have elapsed since the completion of the nurse practitioner program or since the applicant has practiced in the specific nurse practitioner role, the applicant shall meet the requirements in subsection (1) of this section and provide evidence of continuing competency as required by the board pursuant to section 71-17,135.

Source: Laws 1981, LB 379, § 19; Laws 1984, LB 724, § 20; Laws 1986, LB 926, § 55; Laws 1993, LB 536, § 70; Laws 1996, LB 414, § 30; Laws 1997, LB 752, § 173; Laws 2000, LB 1115, § 46; Laws 2002, LB 1021, § 57; Laws 2003, LB 242, § 101; Laws 2005, LB 256, § 59; Laws 2007, LB185, § 6; Laws 2007, LB463, § 809.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 809, and transferred to section 38-2317 operative on December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Licensure Act, see section 71-17,131.

Nurse Licensure Compact, see section 71-1795.

71-1723 Nurse practitioner; license. Anyone fulfilling the requirements listed in section 71-1722 shall be issued a license as an advanced practice registered nurse to practice as a nurse practitioner by the department.

Source: Laws 1981, LB 379, § 20; Laws 1989, LB 344, § 16; Laws 1996, LB 414, § 31; Laws 2000, LB 1115, § 47; Laws 2003, LB 242, § 102; Laws 2005, LB 256, § 60; Laws 2007, LB185, § 7; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-1723.01 Nurse practitioner; right to use title or abbreviation. A person licensed as an advanced practice registered nurse in this state on July 1, 2007, shall be issued a license by the department under the Advanced Practice Registered Nurse Licensure Act to practice as a nurse practitioner under the Nurse Practitioner Act on such date. A person licensed to practice as a nurse practitioner in this state may use the title nurse practitioner and the abbreviation NP.

Source: Laws 1984, LB 724, § 27; Laws 1996, LB 414, § 32; Laws 2000, LB 1115, § 48; Laws 2005, LB 256, § 61; Laws 2007, LB185, § 8; Laws 2007, LB463, § 813.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 813, and transferred to section 38-2321 operative on December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Licensure Act, see section 71-17,131.

71-1723.02 Nurse practitioner; commencement of practice; requirements; waiver. (1) Prior to commencing practice as a nurse practitioner, an individual (a) who has a master's degree or doctorate degree in nursing and has completed an approved nurse practitioner program, (b) who can demonstrate separate course work in pharmacotherapeutics, advanced health assessment, and pathophysiology or psychopathology, and (c) who has completed a minimum of two thousand hours of practice under the supervision of a physician, shall submit to the department an integrated practice agreement with a collaborating physician and shall furnish proof of professional liability insurance required under section 71-1723.04 prior to commencing practice.

(2) A nurse practitioner who needs to obtain the two thousand hours of supervised practice required under subdivision (1)(c) of this section shall (a) submit to the department one or more integrated practice agreements with a collaborating physician, (b) furnish proof of jointly approved protocols with a collaborating physician which shall guide the nurse practitioner's practice, and (c) furnish proof of professional liability insurance required under section 71-1723.04.

(3) If, after a diligent effort to obtain an integrated practice agreement, a nurse practitioner is unable to obtain an integrated practice agreement with one physician, the board may waive the requirement of an integrated practice agreement upon a showing that the applicant (a) meets the requirements of subsection (1) of this section, (b) has made a diligent effort to obtain an integrated practice agreement, and (c) will practice in a geographic area where there is a shortage of health care services.

Source: Laws 1996, LB 414, § 33; Laws 2000, LB 1115, § 49; Laws 2002, LB 1062, § 46; Laws 2005, LB 256, § 62; Laws 2007, LB185, § 9; Laws 2007, LB463, § 814.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 814, and transferred to section 38-2322 operative on December 1, 2008.

71-1723.03 Transferred to section 38-2323.

71-1723.04 Transferred to section 38-2320.

71-1724 Nurse practitioner; license; renewal; requirements. To renew a license to practice as a nurse practitioner, the applicant shall have:

(1) Documentation of a minimum of two thousand eighty hours of practice as a nurse practitioner within the five years immediately preceding renewal. These practice hours shall fulfill the requirements of the practice hours required for registered nurse renewal. Practice hours as an advanced practice registered nurse prior to July 1, 2007, shall be used to fulfill the requirements of this section; and

(2) Proof of current certification in the specific nurse practitioner clinical specialty area by an approved certification program.

Source: Laws 1981, LB 379, § 21; Laws 1983, LB 472, § 6; Laws 1984, LB 724, § 21; Laws 1986, LB 926, § 56; Laws 1988, LB 1100, § 105; Laws 1993, LB 536, § 71; Laws 1996, LB 414, § 36; Laws 2000, LB 1115, § 52; Laws 2002, LB 1021, § 58; Laws 2003, LB 242, § 103; Laws 2005, LB 256, § 65; Laws 2007, LB185, § 10; Laws 2007, LB463, § 811.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 811, and transferred to section 38-2319 operative on December 1, 2008.

71-1724.01 Nurse practitioner; temporary license; requirements. The department may grant a temporary license to practice as a nurse practitioner for up to one hundred twenty days upon application:

(1) To graduates of an approved nurse practitioner program pending results of the first credentialing examination following graduation;

(2) To a nurse practitioner lawfully authorized to practice in another state pending completion of the application for a Nebraska license; and

(3) To applicants for purposes of a reentry program or supervised practice as part of continuing competency activities established by the board pursuant to section 71-17,135.

A temporary license issued pursuant to this section may be extended for up to one year with the approval of the board. An individual holding a temporary permit as a nurse practitioner on July 1, 2007, shall be deemed to be holding a temporary license under this section on such date. The permitholder may continue to practice under such temporary permit as a temporary license until it would have expired under its terms.

Source: Laws 1984, LB 724, § 22; Laws 1993, LB 536, § 72; Laws 1996, LB 414, § 37; Laws 2000, LB 1115, § 53; Laws 2002, LB 1021, § 59; Laws 2005, LB 256, § 66; Laws 2007, LB185, § 11; Laws 2007, LB463, § 810.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 810, and transferred to section 38-2318 operative on December 1, 2008.

71-1724.02 Repealed. Laws 2007, LB 185, § 54.

71-1725 Repealed. Laws 2007, LB 185, § 54.

71-1725.01 Repealed. Laws 2007, LB 185, § 54.

71-1726 Repealed. Laws 2007, LB 185, § 54.

71-1726.01 Unlicensed person; acts permitted. The Nurse Practitioner Act does not prohibit the performance of activities of a nurse practitioner by an unlicensed person if performed:

- (1) In an emergency situation;
- (2) By a legally qualified person from another state employed by the United States Government and performing official duties in this state;
- (3) By a person enrolled in an approved nurse practitioner program for the preparation of nurse practitioners as part of that approved program; and
- (4) By a person holding a temporary license pursuant to section 71-1724.01.

Source: Laws 1984, LB 724, § 25; Laws 1996, LB 414, § 40; Laws 2000, LB 1115, § 58; Laws 2005, LB 256, § 71; Laws 2007, LB185, § 12; Laws 2007, LB463, § 808.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 808, and transferred to section 38-2316 operative on December 1, 2008.

71-1726.02 Prohibited acts; penalty. Any person, corporation, association, or other entity engaging in any of the following activities is guilty of a Class IV felony:

- (1) Practicing as a nurse practitioner without being issued a license as such by the department;
- (2) Employing or offering to employ any person as a nurse practitioner, knowing that such person is not licensed as such by the department;
- (3) Fraudulently seeking, obtaining, or furnishing a license as a nurse practitioner or aiding and abetting such activities; or
- (4) Using in connection with his or her name the title nurse practitioner, the abbreviation NP, or any other designation tending to imply that he or she is a nurse practitioner licensed by the department when such person is not licensed as a nurse practitioner.

Source: Laws 1984, LB 724, § 24; Laws 1996, LB 414, § 41; Laws 2000, LB 1115, § 59; Laws 2005, LB 256, § 72; Laws 2007, LB185, § 13; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

(c) CERTIFIED REGISTERED NURSE ANESTHETIST ACT

71-1728 Transferred to section 38-701.

71-1729 Terms, defined. For purposes of the Certified Registered Nurse Anesthetist Act, unless the context otherwise requires:

- (1) Board means the Board of Advanced Practice Registered Nurses;
- (2) Certified registered nurse anesthetist means a licensed registered nurse certified by a board-approved certifying body and licensed under the Advanced Practice Registered Nurse Licensure Act to practice as a certified registered nurse anesthetist in the State of Nebraska;
- (3) Department means the Department of Health and Human Services;
- (4) Licensed practitioner means any physician or osteopathic physician licensed to prescribe, diagnose, and treat as prescribed in sections 71-1,102 and 71-1,137; and
- (5) Practice of anesthesia means (a) the performance of or the assistance in any act involving the determination, preparation, administration, or monitoring of any drug used to render an individual insensible to pain for procedures requiring the presence of persons educated in the administration of anesthetics or (b) the performance of any act commonly the responsibility of educated anesthesia personnel. Practice of anesthesia includes the use of those techniques which are deemed necessary for adequacy in performance of anesthesia administration. Nothing in the Certified Registered Nurse Anesthetist Act prohibits routine administration of a drug by a duly licensed registered nurse, licensed practical nurse, or other duly authorized person for the alleviation of pain or prohibits the practice of anesthesia by students enrolled in an accredited school of nurse anesthesia when the services performed are a part of the course of study and are under the supervision of a licensed practitioner or certified registered nurse anesthetist.

Source: Laws 1981, LB 379, § 26; Laws 1992, LB 1019, § 73; Laws 2002, LB 1062, § 47; Laws 2005, LB 256, § 74; Laws 2007, LB185, § 14; Laws 2007, LB296, § 485; Laws 2007, LB463, § 236. Operative date July 1, 2007.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 185, section 14, with LB 296, section 485, to reflect all amendments. This section was also amended by Laws 2007, LB 463, section 236, and transferred to section 38-706 operative on December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Licensure Act, see section 71-17,131.

71-1730 Certified registered nurse anesthetist; license; requirements; right to use title or abbreviation. (1) An applicant for a license under the Advanced Practice Registered Nurse Licensure Act to practice as a certified registered nurse anesthetist shall:

- (a) Hold a license as a registered nurse in the State of Nebraska or have the authority based on the Nurse Licensure Compact to practice as a registered nurse in Nebraska;
- (b) Submit evidence of successful completion of a course of study in anesthesia in a school of nurse anesthesia accredited or approved by or under the auspices of the department or the Council on Accreditation of Nurse Anesthesia and Educational Programs; and
- (c) Submit evidence of current certification by the Council on Certification of Nurse Anesthetists.

(2) If more than five years have elapsed since the applicant completed the nurse anesthetist program or since the applicant has practiced as a nurse anesthetist, he or she shall meet the requirements of subsection (1) of this section and shall provide evidence of continuing

competency as determined by the board, including, but not limited to, a reentry program, supervised practice, examination, or one or more of the continuing competency activities listed in section 71-161.09.

(3) A person licensed as a certified registered nurse anesthetist has the right to use the title certified registered nurse anesthetist and the abbreviation C.R.N.A.

Source: Laws 1981, LB 379, § 27; Laws 1984, LB 724, § 29; Laws 1992, LB 1019, § 74; Laws 1996, LB 414, § 44; Laws 1997, LB 752, § 174; Laws 1999, LB 828, § 155; Laws 2002, LB 1021, § 61; Laws 2003, LB 242, § 105; Laws 2005, LB 256, § 78; Laws 2007, LB185, § 15; Laws 2007, LB463, § 237.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 237, and transferred to section 38-707 operative on December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Licensure Act, see section 71-17.131.
Nurse Licensure Compact, see section 71-1795.

71-1731 Certified registered nurse anesthetist; temporary license; requirements. The department may, with the approval of the board, grant a temporary license in the practice of anesthesia for up to one hundred twenty days upon application (1) to graduates of an accredited school of nurse anesthesia pending results of the first certifying examination following graduation and (2) to registered nurse anesthetists currently licensed in another state pending completion of the application for a Nebraska license. A temporary license issued pursuant to this section may be extended at the discretion of the board with the approval of the department. An individual holding a temporary permit as a registered nurse anesthetist on July 1, 2007, shall be deemed to be holding a temporary license under this section on such date. The permitholder may continue to practice under such temporary permit as a temporary license until it would have expired under its terms.

Source: Laws 1981, LB 379, § 28; Laws 1984, LB 724, § 30; Laws 1992, LB 1019, § 75; Laws 1996, LB 414, § 45; Laws 1999, LB 828, § 156; Laws 2005, LB 256, § 79; Laws 2007, LB185, § 16; Laws 2007, LB463, § 238.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 238, and transferred to section 38-708 operative on December 1, 2008.

71-1734 Certified registered nurse anesthetist; performance of duties. (1) The determination and administration of total anesthesia care shall be performed by the certified registered nurse anesthetist or a nurse anesthetist temporarily licensed pursuant to section 71-1731 in consultation and collaboration with and with the consent of the licensed practitioner.

(2) The following duties and functions shall be considered as specific expanded role functions of the certified registered nurse anesthetist:

(a) Preanesthesia evaluation including physiological studies to determine proper anesthetic management and obtaining informed consent;

- (b) Selection and application of appropriate monitoring devices;
- (c) Selection and administration of anesthetic techniques;
- (d) Evaluation and direction of proper postanesthesia management and dismissal from postanesthesia care; and
- (e) Evaluation and recording of postanesthesia course of patients.

(3) The determination of other duties that are normally considered medically delegated duties to the certified registered nurse anesthetist or to a nurse anesthetist temporarily licensed pursuant to section 71-1731 shall be the joint responsibility of the governing board of the hospital, medical staff, and nurse anesthetist personnel of any duly licensed hospital or, if in an office or clinic, the joint responsibility of the duly licensed practitioner and nurse anesthetist. All such duties, except in cases of emergency, shall be in writing in the form prescribed by hospital or office policy.

Source: Laws 1981, LB 379, § 31; Laws 1992, LB 1019, § 76; Laws 2007, LB185, § 17; Laws 2007, LB463, § 241.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 241, and transferred to section 38-711 operative on December 1, 2008.

71-1735 Certified registered nurse anesthetist; license; renewal. To renew a license to practice as a certified registered nurse anesthetist, the applicant shall have current certification by the Council on Certification of Nurse Anesthetists.

Source: Laws 1981, LB 379, § 32; Laws 1993, LB 536, § 73; Laws 1995, LB 563, § 42; Laws 1996, LB 414, § 46; Laws 1999, LB 828, § 157; Laws 2000, LB 1115, § 61; Laws 2002, LB 1021, § 62; Laws 2003, LB 242, § 106; Laws 2005, LB 256, § 80; Laws 2007, LB185, § 18; Laws 2007, LB463, § 239.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 239, and transferred to section 38-709 operative on December 1, 2008.

71-1736.01 Repealed. Laws 2007, LB 185, § 54.

71-1736.02 Repealed. Laws 2007, LB 185, § 54.

71-1736.03 Repealed. Laws 2007, LB 185, § 54.

71-1737 Prohibited activities; penalty. Notwithstanding the provisions of any other statute, any person, corporation, association, or other entity who engages in any of the following activities shall be guilty of a Class IV felony:

- (1) Engaging in the practice of anesthesia as a certified registered nurse anesthetist without being issued a license as such by the department, with the approval of the board;
- (2) Knowingly employing or offering to employ any person as a certified registered nurse anesthetist when knowing that such person is not licensed as such by the department with the approval of the board;

(3) Fraudulently seeking, obtaining, or furnishing a license as a certified registered nurse anesthetist or aiding and abetting such activities; or

(4) Using in connection with his or her name the title certified registered nurse anesthetist, the abbreviation C.R.N.A., or any other designation tending to imply that he or she is a certified registered nurse anesthetist, licensed by the department with the approval of the board pursuant to the Certified Registered Nurse Anesthetist Act, when such person is not actually a certified registered nurse anesthetist.

Source: Laws 1981, LB 379, § 34; Laws 1996, LB 414, § 48; Laws 1996, LB 1044, § 575; Laws 1999, LB 828, § 159; Laws 2005, LB 256, § 81; Laws 2007, LB185, § 19; Laws 2007, LB463, § 1319. Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

(d) NURSE MIDWIFERY

71-1738 Transferred to section 38-601.

71-1739 Transferred to section 38-602.

71-1740 Transferred to section 38-603.

71-1743 Transferred to section 38-605.

71-1745 Department, defined. Department shall mean the Department of Health and Human Services.

Source: Laws 1984, LB 761, § 8; Laws 1996, LB 1044, § 576; Laws 2007, LB296, § 486; Laws 2007, LB463, § 1319. Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-1746 Transferred to section 38-608.

71-1747 Transferred to section 38-607.

71-1748 Certified nurse midwife, defined. Certified nurse midwife shall mean a person certified by a board-approved certifying body and licensed under the Advanced Practice Registered Nurse Licensure Act to practice certified nurse midwifery in the State of Nebraska. Nothing in the Nebraska Certified Nurse Midwifery Practice Act is intended to restrict the practice of registered nurses.

Source: Laws 1984, LB 761, § 11; Laws 2007, LB185, § 20; Laws 2007, LB463, § 218. Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 218, and transferred to section 38-606 operative on December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Licensure Act, see section 71-17,131.

71-1749 Approved certified nurse midwifery education program, defined. Approved certified nurse midwifery education program shall mean a certified nurse midwifery education program approved by the board. The board may require such program to be accredited by the American College of Nurse-Midwives.

Source: Laws 1984, LB 761, § 12; Laws 2005, LB 256, § 85; Laws 2007, LB185, § 21; Laws 2007, LB463, § 216.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 216, and transferred to section 38-604 operative on December 1, 2008.

71-1750 Transferred to section 38-609.

71-1751 Transferred to section 38-610.

71-1752 Certified nurse midwife; authorized activities. A certified nurse midwife may, under the provisions of a practice agreement, (1) attend cases of normal childbirth, (2) provide prenatal, intrapartum, and postpartum care, (3) provide normal obstetrical and gynecological services for women, and (4) provide care for the newborn immediately following birth. The conditions under which a certified nurse midwife is required to refer cases to a collaborating licensed practitioner shall be specified in the practice agreement.

Source: Laws 1984, LB 761, § 15; Laws 2007, LB185, § 22; Laws 2007, LB463, § 223.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 223, and transferred to section 38-611 operative on December 1, 2008.

71-1753 Transferred to section 38-613.

71-1754 Transferred to section 38-614.

71-1755 Certified nurse midwife; licensure; requirements; temporary license. (1) An applicant for licensure under the Advanced Practice Registered Nurse Licensure Act to practice as a certified nurse midwife shall submit to the board such evidence as the board requires showing that the applicant is currently licensed as a registered nurse by the state or has the authority based on the Nurse Licensure Compact to practice as a registered nurse in Nebraska, has successfully completed an approved certified nurse midwifery education program, and is certified as a nurse midwife by a board-approved certifying body.

(2) The department may, with the approval of the board, grant temporary licensure as a certified nurse midwife for up to one hundred twenty days upon application (a) to graduates of an approved nurse midwifery program pending results of the first certifying examination following graduation and (b) to nurse midwives currently licensed in another state pending

completion of the application for a Nebraska license. A temporary license issued pursuant to this section may be extended for up to one year with the approval of the board.

(3) An individual holding a temporary certificate or permit as a nurse midwife on July 1, 2007, shall be deemed to be holding a temporary license under this section on such date. The holder of such temporary certificate or permit may continue to practice under such certificate or permit as a temporary license until it would have expired under its terms.

(4) If more than five years have elapsed since the completion of the nurse midwifery program or since the applicant has practiced as a nurse midwife, the applicant shall meet the requirements in subsection (1) of this section and provide evidence of continuing competency, as may be determined by the board, either by means of a reentry program, references, supervised practice, examination, or one or more of the continuing competency activities listed in section 71-161.09.

Source: Laws 1984, LB 761, § 18; Laws 1993, LB 536, § 76; Laws 1997, LB 752, § 175; Laws 2002, LB 1021, § 63; Laws 2003, LB 242, § 107; Laws 2005, LB 256, § 89; Laws 2007, LB185, § 23; Laws 2007, LB463, § 227.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 227, and transferred to section 38-615 operative on December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Licensure Act, see section 71-17,131.
Nurse Licensure Compact, see section 71-1795.

71-1756 Certified nurse midwife; right to use title or abbreviation. Any person who holds a license to practice nurse midwifery in this state shall have the right to use the title certified nurse midwife and the abbreviation CNM. No other person shall use such title or abbreviation to indicate that he or she is licensed under the Advanced Practice Registered Nurse Licensure Act to practice certified nurse midwifery.

Source: Laws 1984, LB 761, § 19; Laws 2007, LB185, § 24; Laws 2007, LB463, § 229.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 229, and transferred to section 38-617 operative on December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Licensure Act, see section 71-17,131.

71-1757 License; renewal. To renew a license as a certified nurse midwife, the applicant shall have a current certification by a board-approved certifying body to practice nurse midwifery.

Source: Laws 1984, LB 761, § 20; Laws 1986, LB 926, § 57; Laws 1993, LB 536, § 77; Laws 1994, LB 1223, § 42; Laws 2002, LB 1021, § 64; Laws 2002, LB 1062, § 48; Laws 2003, LB 242, § 108; Laws 2005, LB 256, § 90; Laws 2007, LB185, § 25; Laws 2007, LB463, § 228.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 228, and transferred to section 38-616 operative on December 1, 2008.

71-1758 Repealed. Laws 2007, LB 185, § 54.

71-1761 Repealed. Laws 2007, LB 185, § 54.

71-1762 Repealed. Laws 2007, LB 185, § 54.

71-1763 Transferred to section 38-618.

71-1764 Prohibited activities; penalty. Any person, corporation, association, or other entity who engages in any of the following activities shall be guilty of a Class IV felony:

(1) Practicing as a certified nurse midwife without a current license as such under the Nebraska Certified Nurse Midwifery Practice Act;

(2) Employing or offering to employ any person as a certified nurse midwife knowing that such person is not licensed as such under the Nebraska Certified Nurse Midwifery Practice Act;

(3) Fraudulently seeking, obtaining, or furnishing a license as a certified nurse midwife; or

(4) Using in connection with his or her name the title certified nurse midwife, the abbreviation CNM, or any other designation tending to imply that he or she is a certified nurse midwife licensed under the Nebraska Certified Nurse Midwifery Practice Act when such person is not a certified nurse midwife.

Source: Laws 1984, LB 761, § 27; Laws 2007, LB185, § 26; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-1765 Unlicensed person; acts permitted. The Nebraska Certified Nurse Midwifery Practice Act shall not prohibit the performance of the functions of a certified nurse midwife by an unlicensed person if performed:

(1) In an emergency situation;

(2) By a legally qualified person from another state employed by the United States Government and performing official duties in this state; or

(3) By a person enrolled in an approved program for the preparation of certified nurse midwives as part of such approved program.

Source: Laws 1984, LB 761, § 28; Laws 2007, LB185, § 27; Laws 2007, LB463, § 224.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 224, and transferred to section 38-612 operative on December 1, 2008.

(f) LICENSED PRACTICAL NURSE-CERTIFIED

71-1772 Transferred to section 38-1601.

71-1773 Transferred to section 38-1602.

71-1774 Terms, defined. For purposes of the Licensed Practical Nurse-Certified Act:

(1) Administration includes observing, initiating, monitoring, discontinuing, maintaining, regulating, adjusting, documenting, assessing, planning, intervening, and evaluating;

(2) Approved certification course means a course for the education and training of a licensed practical nurse-certified which the board has approved;

(3) Board means the Board of Nursing;

(4) Department means the Department of Health and Human Services;

(5) Direct supervision means that the responsible licensed practitioner or registered nurse is physically present in the clinical area and is available to assess, evaluate, and respond immediately;

(6) Initial venipuncture means the initiation of intravenous therapy based on a new order from a licensed practitioner for an individual for whom a previous order for intravenous therapy was not in effect;

(7) Intravenous therapy means the therapeutic infusion or injection of substances through the venous system;

(8) Licensed practical nurse-certified means a licensed practical nurse who meets the standards established pursuant to section 71-1777 and who holds a valid certificate issued by the department pursuant to the act;

(9) Licensed practitioner means any person authorized by state law to prescribe intravenous therapy; and

(10) Pediatric patient means a patient who is both younger than eighteen years old and under the weight of thirty-five kilograms.

Source: Laws 1993, LB 536, § 22; Laws 1996, LB 1044, § 578; Laws 1997, LB 66, § 2; Laws 1999, LB 594, § 49; Laws 2000, LB 1115, § 62; Laws 2003, LB 213, § 2; Laws 2007, LB296, § 487; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-1775 Transferred to section 38-1621.

71-1776 Transferred to section 38-1613.

71-1777 Transferred to section 38-1615.

71-1778 Transferred to section 38-1616.

71-1779 Transferred to section 38-1617.

71-1780 Transferred to section 38-1622.

- 71-1781** Transferred to section 38-1623.
- 71-1782** Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1783** Transferred to section 38-1624.
- 71-1784** Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1785** Transferred to section 38-1625.
- 71-1787** Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1788** Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1789** Transferred to section 38-1614.
- 71-1790** Transferred to section 38-1620.
- 71-1791** Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1792** Transferred to section 38-1618.
- 71-1793** Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-1794** Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

(h) NEBRASKA CENTER FOR NURSING ACT

71-1798.01 Board of Nursing; duties. The Board of Nursing shall recommend annually to the Department of Health and Human Services the percentage of all nursing fees collected during the year that are to be used to cover the cost of the Nebraska Center for Nursing, except that the percentage shall not be greater than fifteen percent of the biennial revenue derived from the fees.

Source: Laws 2005, LB 243, § 3; Laws 2007, LB296, § 488.
Operative date July 1, 2007.
Termination date July 1, 2010.

71-1799 Nebraska Center for Nursing Board; created; members; terms; powers and duties; expenses. (1) The Nebraska Center for Nursing Board is created. The board shall be a policy-setting board for the Nebraska Center for Nursing. The board shall be appointed by the Governor as follows:

(a) Ten members, at least three of whom shall be registered nurses, one of whom shall be a licensed practical nurse, one of whom shall be a representative of the hospital industry, and one of whom shall be a representative of the long-term care industry;

(b) One nurse educator recommended by the Board of Regents of the University of Nebraska;

(c) One nurse educator recommended by the Nebraska Community College Association;

(d) One nurse educator recommended by the Nebraska Association of Independent Colleges and Universities; and

(e) Three members recommended by the State Board of Health.

(2) The initial terms of the members of the Nebraska Center for Nursing Board shall be:

(a) Five of the ten members appointed under subdivision (1)(a) of this section shall serve for one year and five shall serve for two years;

(b) The member recommended by the Board of Regents shall serve for three years;

(c) The member recommended by the Nebraska Community College Association shall serve for two years;

(d) The member recommended by the Nebraska Association of Independent Colleges and Universities shall serve for one year; and

(e) The members recommended by the State Board of Health shall serve for three years.

The initial appointments shall be made within sixty days after July 13, 2000. After the initial terms expire, the terms of all of the members shall be three years with no member serving more than two consecutive terms.

(3) The Nebraska Center for Nursing Board shall have the following powers and duties:

(a) To determine operational policy;

(b) To elect a chairperson and officers to serve two-year terms. The chairperson and officers may not succeed themselves;

(c) To establish committees of the board as needed;

(d) To appoint a multidisciplinary advisory council for input and advice on policy matters;

(e) To implement the major functions of the Nebraska Center for Nursing; and

(f) To seek and accept nonstate funds for carrying out center policy.

(4) The board members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(5) The Department of Health and Human Services shall provide administrative support for the board. The board may contract for additional support not provided by the department.

Source: Laws 2000, LB 1025, § 4; Laws 2007, LB296, § 489.
Operative date July 1, 2007.
Termination date July 1, 2010.

(i) NURSING STUDENT LOAN ACT

71-17,102 Terms, defined. For purposes of the Nursing Student Loan Act:

(1) Approved nursing program means a program offered by a public or private institution in this state (a) which consists of courses of instruction in regularly scheduled classes leading to a master of science degree, a bachelor of science degree, an associate degree, or a diploma

in nursing or (b) for the preparation for licensure as a licensed practical nurse available to regularly enrolled undergraduate or graduate students;

(2) Department means the Department of Health and Human Services;

(3) Nontraditional student means a student who has not attended classes as a regular full-time student for at least three years; and

(4) Practice of nursing has the definition found in section 38-2210.

Source: Laws 2001, LB 468, § 2; Laws 2007, LB296, § 490; Laws 2007, LB463, § 1191.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 490, with LB 463, section 1191, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

(j) NURSING FACULTY STUDENT LOAN ACT

71-17,109 Terms, defined. For purposes of the Nursing Faculty Student Loan Act:

(1) Approved nursing program means a program offered by a public or private postsecondary educational institution in Nebraska (a) which consists of courses of instruction in regularly scheduled classes leading to a master of science degree, a bachelor of science degree, an associate degree, or a diploma in nursing or (b) for the preparation for licensure as a licensed practical nurse available to regularly enrolled undergraduate or graduate students;

(2) Department means the Department of Health and Human Services; and

(3) Masters or doctoral accredited nursing program means a postgraduate nursing education program that has been accredited by a nationally recognized accrediting agency and offered by a public or private postsecondary educational institution in Nebraska.

Source: Laws 2005, LB 146, § 2; Laws 2007, LB296, § 491.
Operative date July 1, 2007.

71-17,113 License renewal; extra fee. Beginning January 1, 2006, through December 31, 2007, the department shall charge a fee of one dollar, in addition to any other fee, for each license renewal for a registered nurse or licensed practical nurse pursuant to the Nurse Practice Act. Such fee shall be collected at the time of renewal and remitted to the State Treasurer for credit to the Nursing Faculty Student Loan Cash Fund.

Source: Laws 2005, LB 146, § 6; Laws 2007, LB296, § 492; Laws 2007, LB463, § 1192.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 492, with LB 463, section 1192, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Nurse Practice Act, see section 38-2201.

(k) CLINICAL NURSE SPECIALIST PRACTICE ACT

71-17,117 Transferred to section 38-901.

71-17,118 Terms, defined. For purposes of the Clinical Nurse Specialist Practice Act:

(1) Approved certifying body means a national certification organization which (a) is approved by the board, (b) certifies qualified licensed registered nurses for advanced practice, (c) has eligibility requirements related to education and practice, and (d) offers an examination in an area of practice which meets psychometric guidelines and tests approved by the board;

(2) Board means the Board of Advanced Practice Registered Nurses;

(3) Clinical nurse specialist means a registered nurse certified as described in section 71-17,119 and licensed under the Advanced Practice Registered Nurse Licensure Act to practice as a clinical nurse specialist in the State of Nebraska; and

(4) Department means the Department of Health and Human Services.

Source: Laws 2005, LB 256, § 2; Laws 2007, LB185, § 28; Laws 2007, LB296, § 493; Laws 2007, LB463, § 255.
Operative date July 1, 2007.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 185, section 28, with LB 296, section 493, to reflect all amendments. This section was also amended by Laws 2007, LB 463, section 255, and transferred to section 38-903 operative on December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Licensure Act, see section 71-17,131.

71-17,119 Clinical nurse specialist; licensure; requirements. An applicant for licensure under the Advanced Practice Registered Nurse Licensure Act to practice as a clinical nurse specialist shall be licensed as a registered nurse under the Nurse Practice Act or have the authority based on the Nurse Licensure Compact to practice as a registered nurse in Nebraska and shall submit to the department the following:

(1) Evidence that the applicant holds a graduate degree in a nursing clinical specialty area or has a graduate degree in nursing and has successfully completed a graduate-level clinical nurse specialist education program; and

(2) Except as provided in section 71-17,121, evidence of certification issued by an approved certifying body or, when such certification is not available, an alternative method of competency assessment by any means permitted under section 71-17,124 and approved by the board.

Source: Laws 2005, LB 256, § 3; Laws 2007, LB185, § 29; Laws 2007, LB463, § 260.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 260, and transferred to section 38-908 operative on December 1, 2008.

Cross Reference

Advanced Practice Registered Nurse Licensure Act, see section 71-17,131.

Nurse Licensure Compact, see section 71-1795.

Nurse Practice Act, see section 71-1,132.01.

71-17,120 Transferred to section 38-906.

71-17,121 Clinical nurse specialist; licensure; right to use title or abbreviation. (1)

An applicant who meets the requirements for licensure in section 71-17,119 shall be licensed by the department as a clinical nurse specialist, except that a person practicing as a clinical nurse specialist pursuant to the Nurse Practice Act on July 1, 2007, who applies on or after such date and before September 1, 2007, shall be licensed as a clinical nurse specialist under this section without complying with subdivision (2) of section 71-17,119.

(2) A person licensed as a clinical nurse specialist has the right to use the title Clinical Nurse Specialist and the abbreviation CNS.

Source: Laws 2005, LB 256, § 5; Laws 2007, LB185, § 30; Laws 2007, LB463, § 262.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 262, and transferred to section 38-910 operative on December 1, 2008.

Cross Reference

Nurse Practice Act, see section 71-1,132.01.

71-17,122 Application for licensure; how treated. If an applicant for initial licensure as a clinical nurse specialist files an application for licensure within one hundred eighty days prior to the biennial renewal date, the provisions of subsection (2) of section 71-162.04 apply.

Source: Laws 2005, LB 256, § 6; Laws 2007, LB185, § 31; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-17,123 Licenses; expiration; renewal. All licenses issued under the Clinical Nurse Specialist Practice Act shall expire on October 31 of each even-numbered year. Biennial renewals shall be accomplished as the department, with the concurrence of the board, establishes by rule and regulation.

Source: Laws 2005, LB 256, § 7; Laws 2007, LB185, § 32; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-17,124 Continuing competency requirements; waiver; when allowed. (1) An applicant for renewal of a license to practice as a clinical nurse specialist issued under the Clinical Nurse Specialist Practice Act shall demonstrate continuing competency. Continuing competency may be demonstrated by methods which include, but are not limited to, continuing education, course work, continuing practice, national certification or recertification offered by an approved certifying body, a reentry program, satisfactory peer review including patient outcomes, examination, or other continuing competency activities listed in section 71-161.09.

(2) The department, with the concurrence of the board, may waive any continuing competency requirement established under subsection (1) of this section for any two-year period for which a licensee submits documentation of circumstances justifying such a waiver. The department shall define such justifying circumstances in rules and regulations.

Source: Laws 2005, LB 256, § 8; Laws 2007, LB185, § 33; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-17,125 Repealed. Laws 2007, LB 185, § 54.

71-17,126 Repealed. Laws 2007, LB 185, § 54.

71-17,127 Repealed. Laws 2007, LB 185, § 54.

71-17,128 Unlicensed person; acts permitted. The Clinical Nurse Specialist Practice Act does not prohibit the performance of the professional activities of a clinical nurse specialist by a person not holding a license issued under the act if performed:

- (1) In an emergency situation;
- (2) By a legally qualified person from another state employed by the United States and performing official duties in this state; or
- (3) By a person enrolled in an approved clinical nurse specialist program for the education of clinical nurse specialists as part of that approved program.

Source: Laws 2005, LB 256, § 12; Laws 2007, LB185, § 34; Laws 2007, LB463, § 259.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 259, and transferred to section 38-907 operative on December 1, 2008.

71-17,129 Prohibited acts; penalty. Any person committing any of the following acts is guilty of a Class IV felony:

- (1) Practicing as a clinical nurse specialist without a license issued under the Clinical Nurse Specialist Practice Act except as provided in section 71-17,128;
- (2) Knowingly employing or offering to employ any person as a clinical nurse specialist who does not hold a license issued under the act;
- (3) Fraudulently seeking, obtaining, or furnishing a license as a clinical nurse specialist or aiding and abetting such actions; or
- (4) Holding himself or herself out as a clinical nurse specialist or using the abbreviation CNS or any other designation tending to imply that he or she is a clinical nurse specialist holding a license issued under the act if he or she does not hold such a license.

Source: Laws 2005, LB 256, § 13; Laws 2007, LB185, § 35; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-17,130 Repealed. Laws 2007, LB 463, § 1319.

Operative date December 1, 2008.

(I) ADVANCED PRACTICE REGISTERED NURSE LICENSURE ACT

71-17,131 Transferred to section 38-201.

71-17,132 Transferred to section 38-202.

71-17,133 Transferred to section 38-203.

71-17,134 Board of Advanced Practice Registered Nurses; members; qualifications; terms; removal; per diem; expenses. (1) The Board of Advanced Practice Registered Nurses is established. The purpose of the board is to (a) provide for the health, safety, and welfare of the citizens, (b) ensure that licensees serving the public meet minimum standards of proficiency and competency, and (c) control the profession in the interest of consumer protection.

(2)(a) Until July 1, 2007, the board shall consist of (i) five advanced practice registered nurses representing different advanced practice registered nurse specialties for which a license has been issued, (ii) five physicians licensed under the Uniform Licensing Law to practice medicine in Nebraska, at least three of whom shall have a current collaborating relationship with an advanced practice registered nurse, (iii) three consumer members, and (iv) one licensed pharmacist.

(b) On and after July 1, 2007, the board shall consist of:

(i) One nurse practitioner holding a license under the Nurse Practitioner Act, one certified nurse midwife holding a license under the Nebraska Certified Nurse Midwifery Practice Act, one certified registered nurse anesthetist holding a license under the Certified Registered Nurse Anesthetist Act, and one clinical nurse specialist holding a license under the Clinical Nurse Specialist Practice Act, except that the initial clinical nurse specialist appointee may be a clinical nurse specialist practicing pursuant to the Nurse Practice Act as such act existed prior to July 1, 2007. Of the initial appointments under this subdivision, one shall be for a two-year term, one shall be for a three-year term, one shall be for a four-year term, and one shall be for a five-year term. All subsequent appointments under this subdivision shall be for five-year terms;

(ii) Three physicians, one of whom shall have a professional relationship with a nurse practitioner, one of whom shall have a professional relationship with a certified nurse midwife, and one of whom shall have a professional relationship with a certified registered nurse anesthetist. Of the initial appointments under this subdivision, one shall be for a three-year term, one shall be for a four-year term, and one shall be for a five-year term. All subsequent appointments under this subdivision shall be for five-year terms; and

(iii) Two public members. Of the initial appointments under this subdivision, one shall be for a three-year term, and one shall be for a four-year term. All subsequent appointments

under this subdivision shall be for five-year terms. Public members of the board shall have the same qualifications as provided in subsection (1) of section 71-113.

(c) Members of the board serving immediately before July 1, 2007, shall serve until members are appointed and qualified under subdivision (2)(b) of this section.

(3) The members of the board shall be appointed by the State Board of Health. Members shall be appointed for terms of five years except as otherwise provided in subdivisions (2)(b) and (c) of this section. At the expiration of the term of any member, the State Board of Health may consult with appropriate professional organizations regarding candidates for appointment to the Board of Advanced Practice Registered Nurses. Upon expiration of terms, appointments or reappointments shall be made on or before December 1 of each year. Vacancies on the Board of Advanced Practice Registered Nurses shall be filled for the unexpired term by appointments made by the State Board of Health. No member shall serve more than two consecutive terms on the Board of Advanced Practice Registered Nurses.

(4) The State Board of Health has power to remove from office any member of the Board of Advanced Practice Registered Nurses, after a public hearing pursuant to the Administrative Procedure Act, for physical or mental incapacity to carry out the duties of a board member, for continued neglect of duty, for incompetence, for acting beyond the individual member's scope of authority, for malfeasance in office, for any cause for which a license or certificate in the member's profession involved may be suspended or revoked, for a lack of licensure or certification in the member's profession, or for other sufficient cause.

(5) Each member of the Board of Advanced Practice Registered Nurses shall receive a per diem of thirty dollars per day for each day the member is actually engaged in the discharge of his or her official duties and shall be reimbursed for travel, lodging, and other necessary expenses incurred as a member of the board pursuant to sections 81-1174 to 81-1177.

(6) The department shall adopt and promulgate rules and regulations which define conflicts of interest for members of the Board of Advanced Practice Registered Nurses and which establish procedures in case such a conflict arises.

Source: Laws 1996, LB 414, § 27; Laws 2000, LB 1115, § 42; R.S.1943, (2003), § 71-1718.01; Laws 2005, LB 256, § 39; Laws 2007, LB185, § 36; Laws 2007, LB463, § 144.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 144, and transferred to section 38-205 operative on December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

Certified Registered Nurse Anesthetist Act, see section 71-1728.

Clinical Nurse Specialist Practice Act, see section 71-17,117.

Nebraska Certified Nurse Midwifery Practice Act, see section 71-1738.

Nurse Practice Act, see section 71-1,132.01.

Nurse Practitioner Act, see section 71-1704.

Uniform Licensing Law, see section 71-101.

71-17,135 Board of Advanced Practice Registered Nurses; duties. The Board of Advanced Practice Registered Nurses shall:

(1) Establish standards for integrated practice agreements between collaborating physicians and certified nurse midwives, and nurse practitioners;

(2) Monitor the scope of practice by certified nurse midwives, certified registered nurse anesthetists, clinical nurse specialists, and nurse practitioners;

(3) Administer and enforce the Advanced Practice Registered Nurse Licensure Act in order to (a) provide for the health, safety, and welfare of the citizens, (b) ensure that advanced practice registered nurses serving the public meet minimum standards of proficiency and competency, (c) control the profession in the interest of consumer protection, (d) regulate the scope of advanced practice nursing, (e) recommend disciplinary actions as provided in this section, and (f) enforce licensure requirements;

(4) Recommend disciplinary action relating to licenses of advanced practice registered nurses, certified nurse midwives, certified registered nurse anesthetists, clinical nurse specialists, and nurse practitioners;

(5) Engage in other activities not inconsistent with the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Nebraska Certified Nurse Midwifery Practice Act, and the Nurse Practitioner Act; and

(6) Approve rules and regulations to implement the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Nebraska Certified Nurse Midwifery Practice Act, and the Nurse Practitioner Act, for adoption and promulgation by the department. Such rules and regulations shall include: (a) Approved certification organizations and approved certification programs; (b) continuing competency requirements. The requirements may include, but not be limited to, continuing education, continuing practice, national recertification, a reentry program, peer review including patient outcomes, examination, or other continuing competency activities listed in section 71-161.09; (c) grounds for discipline; (d) issuance, renewal, and reinstatement of licenses; (e) fees; (f) professional liability insurance; and (g) conflict of interest for board members.

Source: Laws 1996, LB 414, § 28; Laws 2000, LB 1115, § 43; Laws 2002, LB 1021, § 56; R.S.1943, (2003), § 71-1718.02; Laws 2005, LB 256, § 40; Laws 2007, LB185, § 37; Laws 2007, LB463, § 145. Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 145, and transferred to section 38-206 operative on December 1, 2008.

Cross Reference

Certified Registered Nurse Anesthetist Act, see section 71-1728.

Clinical Nurse Specialist Practice Act, see section 71-17,117.

Nebraska Certified Nurse Midwifery Practice Act, see section 71-1738.

Nurse Practitioner Act, see section 71-1704.

71-17,136 Transferred to section 38-207.

71-17,137 License; qualifications; use of title or abbreviation. (1) An applicant for initial licensure as an advanced practice registered nurse shall:

(a) Be licensed as a registered nurse under the Nurse Practice Act or have authority based on the Nurse Licensure Compact to practice as a registered nurse in Nebraska;

(b) Be a graduate of or have completed a graduate-level advanced practice registered nurse program in a clinical specialty area of certified registered nurse anesthetist, clinical nurse specialist, certified nurse midwife, or nurse practitioner, which program is accredited by a national accrediting body;

(c) Be certified as a certified registered nurse anesthetist, a clinical nurse specialist, a certified nurse midwife, or a nurse practitioner, by an approved certifying body or an alternative method of competency assessment approved by the board, pursuant to the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Nebraska Certified Nurse Midwifery Practice Act, or the Nurse Practitioner Act, as appropriate to the applicant's educational preparation;

(d) Submit a completed written application to the department which includes the applicant's social security number and appropriate fees established and collected as provided in section 71-162;

(e) Provide evidence as required by rules and regulations approved by the board and adopted and promulgated by the department; and

(f) Have committed no acts or omissions which are grounds for disciplinary action in another jurisdiction or, if such acts have been committed and would be grounds for discipline under the Nurse Practice Act, the board has found after investigation that sufficient restitution has been made.

(2) The department may issue a license by endorsement under this section to an applicant who holds a license from another jurisdiction if the licensure requirements of such other jurisdiction meet or exceed the requirements for licensure as an advanced practice registered nurse under the Advanced Practice Registered Nurse Licensure Act. An applicant under this subsection shall submit a completed application to the department which includes the applicant's social security number, fees established and collected as provided in section 71-162, and other evidence as required by rules and regulations approved by the board and adopted and promulgated by the department.

(3) A person licensed as an advanced practice registered nurse or certified as a certified registered nurse anesthetist or a certified nurse midwife in this state on July 1, 2007, shall be issued a license by the department as an advanced practice registered nurse on such date.

(4) A person licensed as an advanced practice registered nurse in this state may use the title advanced practice registered nurse and the abbreviation APRN.

Source: Laws 2005, LB 256, § 42; Laws 2007, LB185, § 38; Laws 2007, LB463, § 147.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 147, and transferred to section 38-208 operative on December 1, 2008.

Cross Reference

Certified Registered Nurse Anesthetist Act, see section 71-1728.
Clinical Nurse Specialist Practice Act, see section 71-17,117.
Nebraska Certified Nurse Midwifery Practice Act, see section 71-1738.
Nurse Licensure Compact, see section 71-1795.
Nurse Practice Act, see section 71-1,132.01.
Nurse Practitioner Act, see section 71-1704.

71-17,138 Renewal; requirements. (1) The license of each person licensed under the Advanced Practice Registered Nurse Licensure Act shall be renewed at the same time and in the same manner as renewal of a license for a registered nurse and shall require that the applicant have (a) a license as a registered nurse issued by the state or have the authority based on the Nurse Licensure Compact to practice as a registered nurse in Nebraska, (b) documentation of continuing competency, either by reference, peer review, examination, or one or more of the continuing competency activities listed in section 71-161.09, as established by the board in rules and regulations approved by the board and adopted and promulgated by the department, and (c) met any specific requirements for renewal under the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Nebraska Certified Nurse Midwifery Practice Act, or the Nurse Practitioner Act, as applicable.

(2) The department shall establish and collect fees for renewal as provided in section 71-162.

Source: Laws 2005, LB 256, § 43; Laws 2007, LB185, § 39; Laws 2007, LB463, § 148.
 Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 148, and transferred to section 38-209 operative on December 1, 2008.

Cross Reference

Certified Registered Nurse Anesthetist Act, see section 71-1728.
Clinical Nurse Specialist Practice Act, see section 71-17,117.
Nebraska Certified Nurse Midwifery Practice Act, see section 71-1738.
Nurse Licensure Compact, see section 71-1795.
Nurse Practitioner Act, see section 71-1704.

71-17,139 Disciplinary actions; grounds; procedure; appeal. A license issued under the Advanced Practice Registered Nurse Licensure Act to practice as a certified nurse midwife, a certified registered nurse anesthetist, a clinical nurse specialist, or a nurse practitioner may be denied, refused renewal, revoked, suspended, or disciplined in any other manner for any violation of the act, for physical or mental disability or incapacity, for gross incompetence, or for any reason for which a license issued under the Nurse Practice Act may be denied, refused renewal, revoked, suspended, or disciplined. The methods and procedures provided in the Nurse Practice Act for opportunity for hearing, notice of hearing, presentation of evidence, conduct of a hearing, reinstatement, and related matters shall apply to disciplinary actions under this section. A decision to deny, refuse renewal of, revoke, suspend, or discipline a license as an advanced practice registered nurse may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2005, LB 256, § 44; Laws 2007, LB185, § 40; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

Nurse Practice Act, see section 71-1,132.01.

71-17,140 Lapse of license; conditions; effect; restoration. (1) An advanced practice registered nurse's license lapses if he or she does not renew his or her license to practice as a registered nurse or is not authorized to practice as a registered nurse in this state under the Nurse Licensure Compact.

(2) When an advanced practice registered nurse's license lapses, the right of the person whose license has lapsed to represent himself or herself as an advanced practice registered nurse and to practice the activities for which a license is required terminates. To restore the license to active status, the person shall meet the requirements for renewal which are in effect at the time that he or she wishes to restore the license and shall pay the renewal fee and the late fee established and collected as provided in section 71-162.

Source: Laws 2005, LB 256, § 45; Laws 2007, LB185, § 41; Laws 2007, LB463, § 149.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 149, and transferred to section 38-210 operative on December 1, 2008.

Cross Reference

Nurse Licensure Compact, see section 71-1795.

71-17,141 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

ARTICLE 18

PATHOGENIC MICROORGANISMS

Section.

71-1802. Permit; Department of Health and Human Services, authority; certification to State Veterinarian.

71-1803. Permit; State Veterinarian, authority; rules and regulations.

71-1804. Permit; duration; abrogation; renewal.

71-1802 Permit; Department of Health and Human Services, authority; certification to State Veterinarian. The Department of Health and Human Services is hereby authorized to issue permits for the use of the pathogenic microorganisms described in section 71-1801 in the prevention or control of diseases in humans, if in the opinion of the department there is sufficient warrant for their utilization for such purpose. The department shall certify to the State Veterinarian the materials or substances that contain live

microorganisms which are pathogenic to humans. The department is further authorized to promulgate rules and regulations to carry out the provisions of this section.

Source: Laws 1943, c. 153, § 2, p. 562; R.S.1943, § 71-1802; Laws 1996, LB 1044, § 579; Laws 2007, LB296, § 494.
Operative date July 1, 2007.

71-1803 Permit; State Veterinarian, authority; rules and regulations. The State Veterinarian is hereby authorized to issue permits for the use of the pathogenic microorganisms described in section 71-1801 in the prevention or control of diseases of animals, if in the opinion of the Department of Health and Human Services there is sufficient warrant for their utilization for such purpose. In carrying out the duties of this section with reference to animals, the State Veterinarian shall take into consideration the certification made by the Department of Health and Human Services as provided for in section 71-1802. The State Veterinarian is further authorized to promulgate rules and regulations to carry out the provisions of this section.

Source: Laws 1943, c. 153, § 3, p. 562; R.S.1943, § 71-1803; Laws 1965, c. 334, § 8, p. 958; Laws 1996, LB 1044, § 580; Laws 2007, LB296, § 495.
Operative date July 1, 2007.

71-1804 Permit; duration; abrogation; renewal. The permits, issued under the provisions of sections 71-1802 and 71-1803, shall be valid for the period of one year, or part thereof, expiring on December 31 of each year. However, all such permits must remain subject to abrogation and renewal, if in the opinion of the Department of Health and Human Services or State Veterinarian there is sufficient warrant for such abrogation or renewal.

Source: Laws 1943, c. 153, § 4, p. 562; R.S.1943, § 71-1804; Laws 1996, LB 1044, § 581; Laws 2007, LB296, § 496.
Operative date July 1, 2007.

ARTICLE 19

CARE OF CHILDREN

(a) FOSTER CARE LICENSURE

Section.

71-1903. Foster care; investigation by department; State Fire Marshal; fee; criminal history record information check.

(b) CHILD CARE LICENSURE

71-1909. Purposes of act; legislative intent.

71-1910. Terms, defined.

71-1913.01. Immunization requirements; record; report.

71-1913.02. Immunization reports; audit; deficiencies; duties.

71-1913.03. Immunization; department; adopt rules and regulations.

- 71-1914. Department; serve as coordinating agency; local rules and regulations; report of violation.
- 71-1915. Department; emergency powers; injunction.
- 71-1919. License denial; disciplinary action; grounds.
- 71-1922. Denial of license; disciplinary action; notice; final; when.

(a) FOSTER CARE LICENSURE

71-1903 Foster care; investigation by department; State Fire Marshal; fee; criminal history record information check. (1) Before issuance of a license under sections 71-1901 to 71-1906.01, the department shall cause such investigation to be made as it deems necessary to determine if the character of the applicant, any member of the applicant's household, or the person in charge of the service and the place where the foster care is to be furnished are such as to ensure the proper care and treatment of children. The department may request the State Fire Marshal to inspect such places for fire safety pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01, payable by the licensee or applicant for a license, except that the department may pay the fee for inspection for fire safety of foster family homes as defined in section 71-1902. The department may conduct sanitation and health standards investigations pursuant to subsection (2) of this section. The department may also, at any time it sees fit, cause an inspection to be made of the place where any licensee is furnishing foster care to see that such service is being properly conducted.

(2) The department shall make an investigation and report of all facilities and programs of licensed providers of foster care programs subject to this section or applicants for licenses to provide such programs to determine if the place or places to be covered by such licenses meet standards of health and sanitation set by the department for the care and protection of the child or children who may be placed in such facilities and programs. The department may delegate the investigation authority to qualified local environmental health personnel.

(3) Before the foster care placement of any child in Nebraska by the department, the department shall require a national criminal history record information check of the prospective foster parent of such child and each member of such prospective foster parent's household who is eighteen years of age or older. The department shall provide two sets of legible fingerprints for such persons to the Nebraska State Patrol for submission to the Federal Bureau of Investigation. The Nebraska State Patrol shall conduct a criminal history record information check of such persons and shall submit such fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The criminal history record information check shall include information from federal repositories of such information and repositories of such information in other states if authorized by federal law. The Nebraska State Patrol shall issue a report of the results of such criminal history record information check to the department. The department shall pay a fee to the Nebraska State Patrol for conducting such check. Information received from the criminal history record information check required under this subsection shall be used solely for the purpose of evaluating and confirming information provided by such persons for providing foster care or

for the finalization of an adoption. A child may be placed in foster care by the department prior to the completion of a criminal history record information check under this subsection in emergency situations as determined by the department.

Source: Laws 1943, c. 154, § 3, p. 564; R.S.1943, § 71-1903; Laws 1945, c. 171, § 3, p. 549; Laws 1961, c. 415, § 27, p. 1259; Laws 1967, c. 446, § 2, p. 1388; Laws 1983, LB 498, § 2; Laws 1985, LB 447, § 37; Laws 1987, LB 386, § 3; Laws 1988, LB 930, § 2; Laws 1991, LB 836, § 28; Laws 1995, LB 401, § 26; Laws 1995, LB 451, § 3; Laws 1996, LB 1044, § 584; Laws 1997, LB 307, § 172; Laws 1997, LB 622, § 101; Laws 2001, LB 209, § 21; Laws 2002, LB 93, § 9; Laws 2004, LB 1005, § 66; Laws 2007, LB296, § 497.
Operative date July 1, 2007.

(b) CHILD CARE LICENSURE

71-1909 Purposes of act; legislative intent. (1) The purposes of the Child Care Licensing Act are to provide:

- (a) Statewide licensure standards for persons providing child care programs; and
 - (b) The department with authority to coordinate the enforcement of standards on licensees.
- (2) It is the intent of the Legislature that the licensing and regulation of programs under the act exist for the protection of children and to assist parents in making informed decisions concerning enrollment and care of their children in such programs.

Source: Laws 1984, LB 130, § 2; Laws 1995, LB 401, § 30; Laws 1996, LB 1044, § 587; Laws 1997, LB 307, § 175; Laws 1997, LB 310, § 4; Laws 1999, LB 594, § 50; Laws 2004, LB 1005, § 68; Laws 2007, LB296, § 498.
Operative date July 1, 2007.

71-1910 Terms, defined. For purposes of the Child Care Licensing Act, unless the context otherwise requires:

- (1) Department means the Department of Health and Human Services; and
- (2)(a) Program means the provision of services in lieu of parental supervision for children under thirteen years of age for compensation, either directly or indirectly, on the average of less than twelve hours per day, but more than two hours per week, and includes any employer-sponsored child care, family child care home, child care center, school-age child care program, school-age services pursuant to section 79-1104, or preschool or nursery school.
- (b) Program does not include casual care at irregular intervals, a recreation camp as defined in section 71-3101, classes or services provided by a religious organization other than child care or a preschool or nursery school, a preschool program conducted in a school approved pursuant to section 79-318, services provided only to school-age children during the summer and other extended breaks in the school year, or foster care as defined in section 71-1901.

Source: Laws 1984, LB 130, § 3; Laws 1986, LB 68, § 1; Laws 1987, LB 472, § 1; Laws 1991, LB 836, § 29; Laws 1995, LB 401, § 31; Laws 1995, LB 451, § 9; Laws 1996, LB 900, § 1058; Laws 1996, LB 1044, § 588; Laws 1997, LB 307, § 176; Laws 1997, LB 310, § 5; Laws 1999, LB 594, § 51; Laws 2004, LB 1005, § 69; Laws 2006, LB 994, § 97; Laws 2007, LB296, § 499.
Operative date July 1, 2007.

71-1913.01 Immunization requirements; record; report. (1) Each program shall require the parent or guardian of each child enrolled in such program to present within thirty days after enrollment and periodically thereafter (a) proof that the child is protected by age-appropriate immunization against measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, tetanus, haemophilus influenzae type B, and invasive pneumococcal disease and such other diseases as the department may from time to time specify based on then current medical and scientific knowledge, (b) certification by a physician, an advanced practice registered nurse practicing under and in accordance with his or her respective certification act, or a physician assistant that immunization is not appropriate for a stated medical reason, or (c) a written statement that the parent or guardian does not wish to have such child so immunized and the reasons therefor. The program shall exclude a child from attendance until such proof, certification, or written statement is provided. At the time the parent or guardian is notified that such information is required, he or she shall be notified in writing of his or her right to submit a certification or written statement pursuant to subdivision (b) or (c) of this subsection.

(2) Each program shall keep the written record of immunization, the certification, or the written statement of the parent or guardian. Such record, certification, or statement shall be kept by the program as part of the child's file, shall be available onsite to the department, and shall be filed with the department for review and inspection. Each program shall report to the department by November 1 of each year the status of immunization for children enrolled as of September 30 of that year, and children who have reached kindergarten age and who are enrolled in public or private school need not be included in the report.

Source: Laws 1987, LB 472, § 2; Laws 1992, LB 431, § 6; Laws 1995, LB 401, § 35; Laws 1996, LB 414, § 49; Laws 1996, LB 1044, § 590; Laws 1998, LB 1073, § 103; Laws 1999, LB 594, § 54; Laws 2000, LB 1115, § 70; Laws 2005, LB 256, § 92; Laws 2005, LB 301, § 38; Laws 2007, LB247, § 50; Laws 2007, LB296, § 500.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 50, with LB 296, section 500, to reflect all amendments.

Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 296 became operative July 1, 2007.

71-1913.02 Immunization reports; audit; deficiencies; duties. (1) The department shall perform annually a random audit of the reports submitted under section 71-1913.01 to check for compliance with such section on an annual basis and such other audits and inspections as are necessary to prevent the introduction or spread of disease. Audit results shall be reported to the department.

(2) If the department discovers noncompliance with section 71-1913.01, the department shall allow a noncomplying program thirty days to correct deficiencies.

(3) The department shall develop and provide educational and other materials to programs and the public as may be necessary to implement section 71-1913.01.

Source: Laws 1987, LB 472, § 3; Laws 1995, LB 401, § 36; Laws 1996, LB 1044, § 591; Laws 1997, LB 307, § 178; Laws 1998, LB 1073, § 104; Laws 1999, LB 594, § 55; Laws 2005, LB 301, § 39; Laws 2007, LB296, § 501.
Operative date July 1, 2007.

71-1913.03 Immunization; department; adopt rules and regulations. The department shall adopt and promulgate rules and regulations relating to the required levels of protection, using as a guide the recommendations of the American Academy of Pediatrics and the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention of the United States Department of Health and Human Services, Public Health Service, and the methods, manner, and frequency of reporting of each child's immunization status. The department shall furnish each program with copies of such rules and regulations and any other material which will assist in carrying out section 71-1913.01.

Source: Laws 1987, LB 472, § 4; Laws 1992, LB 431, § 7; Laws 1995, LB 401, § 37; Laws 1996, LB 1044, § 592; Laws 1998, LB 1073, § 105; Laws 2005, LB 301, § 40; Laws 2007, LB296, § 502.
Operative date July 1, 2007.

71-1914 Department; serve as coordinating agency; local rules and regulations; report of violation. (1) The department shall be the state's coordinating agency for licensure and regulation of programs in this state in order to (a) provide efficient services pursuant to the Child Care Licensing Act, (b) avoid duplication of services, and (c) prevent an unnecessary number of inspections of any program. The department may request cooperation and assistance from local and state agencies and such agencies shall promptly respond. The extent of an agency's cooperation may be included in the report to the Legislature pursuant to section 43-3402.

(2) A city, village, or county may adopt rules, regulations, or ordinances establishing physical well-being and safety standards for programs whether or not the persons providing such programs are subject to licensure under section 71-1911. Such rules, regulations, or ordinances shall be as stringent as or more stringent than the department's rules and regulations for licensees pursuant to the Child Care Licensing Act. The city, village, or county adopting such rules, regulations, or ordinances and the department shall coordinate the inspection and supervision of licensees to avoid duplication of inspections. A city, village, or county shall report any violation of such rules, regulations, or ordinances to the department. The city, village, or county may administer and enforce such rules, regulations, and ordinances. Enforcement of provisions of the Child Care Licensing Act or rules or regulations adopted and promulgated under the act shall be by the department pursuant to sections 71-1919 to 71-1923.

Source: Laws 1984, LB 130, § 7; Laws 1995, LB 401, § 38; Laws 1997, LB 310, § 11; Laws 1997, LB 752, § 178; Laws 2001, LB 213, § 1; Laws 2004, LB 1005, § 74; Laws 2006, LB 994, § 100; Laws 2007, LB296, § 503.
Operative date July 1, 2007.

71-1915 Department; emergency powers; injunction. (1) Whenever the department finds that an emergency exists requiring immediate action to protect the physical well-being and safety of a child in a program, the department may, without notice or hearing, issue an order declaring the existence of such an emergency and requiring that such action be taken as the department deems necessary to meet the emergency. The order may include an immediate

prohibition on the care of children by the licensee other than children of the licensee. An order under this subsection shall be effective immediately. Any person to whom the order is directed shall comply immediately, and upon application to the department, the person shall be afforded a hearing as soon as possible and not later than ten days after his or her application for the hearing. On the basis of such hearing the department shall continue to enforce such order or rescind or modify it.

(2) The department may petition the appropriate district court for an injunction whenever there is the belief that any person is violating the Child Care Licensing Act, an order issued pursuant to the act, or any rule or regulation adopted and promulgated pursuant to the act. It shall be the duty of each county attorney or the Attorney General to whom the department reports a violation to cause appropriate proceedings to be instituted without delay to ensure compliance with the act, rules, regulations, and orders.

Source: Laws 1984, LB 130, § 8; Laws 1987, LB 472, § 5; Laws 1988, LB 1013, § 3; Laws 1993, LB 510, § 3; Laws 1995, LB 401, § 39; Laws 1997, LB 310, § 12; Laws 1999, LB 594, § 56; Laws 2001, LB 213, § 2; Laws 2004, LB 1005, § 78; Laws 2007, LB296, § 504.
Operative date July 1, 2007.

71-1919 License denial; disciplinary action; grounds. The department may deny the issuance of or take disciplinary action against a license issued under the Child Care Licensing Act on any of the following grounds:

(1) Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the act;

(2) Violation of an order of the department under the act;

(3) Conviction of, or substantial evidence of committing or permitting, aiding, or abetting another to commit, any unlawful act, including, but not limited to, unlawful acts committed by an applicant or licensee under the act, household members who reside at the place where the program is provided, or employees of the applicant or licensee that involve:

(a) Physical abuse of children or vulnerable adults as defined in section 28-371;

(b) Endangerment or neglect of children or vulnerable adults;

(c) Sexual abuse, sexual assault, or sexual misconduct;

(d) Homicide;

(e) Use, possession, manufacturing, or distribution of a controlled substance listed in section 28-405;

(f) Property crimes, including, but not limited to, fraud, embezzlement, and theft by deception; and

(g) Use of a weapon in the commission of an unlawful act;

(4) Conduct or practices detrimental to the health or safety of a person served by or employed at the program;

(5) Failure to allow an agent or employee of the department access to the program for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the department;

- (6) Failure to allow state or local inspectors, investigators, or law enforcement officers access to the program for the purposes of investigation necessary to carry out their duties;
- (7) Failure to meet requirements relating to sanitation, fire safety, and building codes;
- (8) Failure to comply with or violation of the Medication Aide Act;
- (9) Failure to file a report of suspected abuse or neglect as required by sections 28-372 and 28-711;
- (10) Violation of any city, village, or county rules, regulations, or ordinances regulating licensees; or
- (11) Failure to pay fees required under the Child Care Licensing Act.

Source: Laws 2004, LB 1005, § 82; Laws 2007, LB296, § 505.
Operative date July 1, 2007.

Cross Reference

Medication Aide Act, see section 71-6718.

71-1922 Denial of license; disciplinary action; notice; final; when. (1) If the department determines to deny the issuance of or take disciplinary action against a license under the Child Care Licensing Act, the department shall send to the applicant or licensee, by certified mail to the address of the applicant or licensee, a notice setting forth the determination, the particular reasons for the determination, including a specific description of the nature of the violation and the statute, rule, regulation, or order violated, and the type of disciplinary action which is pending. A copy of the notice shall also be mailed to the person in charge of the program if the licensee is not actually involved in the daily operation of the program. If the licensee is a corporation, a copy of the notice shall be sent to the corporation's registered agent.

(2) The denial or disciplinary action shall become final fifteen days after the mailing of the notice unless the applicant or licensee, within such fifteen-day period, makes a written request for a hearing. The license shall continue in effect until the final order of the department if a hearing is requested. If the department does not receive such request within such fifteen-day period, the action of the department shall be final.

Source: Laws 2004, LB 1005, § 85; Laws 2007, LB296, § 506.
Operative date July 1, 2007.

ARTICLE 20

HOSPITALS

(a) SURVEY AND CONSTRUCTION

Section.

71-2002. Terms, defined.

71-2003. Department; duties.

71-2004. Department; powers and duties.

- 71-2006. Administration; appropriation by the Legislature; expenditures; certification by department.
- 71-2007. Department; inventory; survey; planning; program.
- 71-2009. Survey and planning; application for federal funds; expenditure.
- 71-2010. State plan; notice; hearing; submission to Surgeon General; hearing; approval of plans; review of program.
- 71-2011. Department; maintenance and operation of hospitals and medical facilities; prescribe minimum standards.
- 71-2013. Construction projects; federal funds; application; requirements.
- 71-2014. Construction projects; hearing; approval; recommendation of department.
- 71-2015. Construction projects; inspection; certification of work performed; payment due.

(h) UNIFORM BILLING FORMS

- 71-2081. Hospital; submission of data; release by department.
- 71-2082. Department; adopt rules and regulations.

(j) RECEIVERS

- 71-2084. Terms, defined.
- 71-2086. Appointment of receiver; procedure; temporary receiver; purpose of receivership.
- 71-2096. Interference with enforcement; penalty.

(k) MEDICAID PROGRAM VIOLATIONS

- 71-2097. Terms, defined.
- 71-2098. Civil penalties; department; powers.
- 71-2099. Civil penalties; type and amount; criteria.
- 71-20,100. Nursing Facility Penalty Cash Fund; created; use; investment.
- 71-20,101. Rules and regulations.

(l) NONPROFIT HOSPITAL SALE ACT

- 71-20,103. Terms, defined.
- 71-20,113. Applicability of act.

(a) SURVEY AND CONSTRUCTION

71-2002 Terms, defined. For purposes of the State Hospital Survey and Construction Act:

- (1) Department shall mean the Department of Health and Human Services;
- (2) The federal act shall mean, but is not restricted to, Public Law 88-156, Public Law 88-164, Public Law 88-581, Public Law 88-443, and other measures of similar intent which have been, or may in the future be, passed by the Congress of the United States;
- (3) The Surgeon General shall mean the Surgeon General of the Public Health Service of the United States or such other federal office or agency responsible for the administration of the federal Hospital Survey and Construction Act, 42 U.S.C. 291 and amendments thereto;
- (4) Hospital includes, but is not restricted to, facilities or parts of facilities, which provide space for public health centers, mental health clinics, and general, tuberculosis, mental, long-term care, and other types of hospitals, and related facilities, such as homes for the aged

or infirm, laboratories, out-patient departments, nurses' home and educational facilities, and central service facilities operated in connection with hospitals;

(5) Public health center shall mean a publicly owned facility for providing public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers; and

(6) Nonprofit hospital shall mean any hospital owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Source: Laws 1947, c. 232, § 2, p. 733; Laws 1965, c. 421, § 1, p. 1349; Laws 1971, LB 753, § 1; Laws 1996, LB 1044, § 593; Laws 2007, LB296, § 507.
Operative date July 1, 2007.

71-2003 Department; duties. The department shall constitute the sole agency of the state for the purpose of (1) making an inventory of existing hospitals, surveying the need for construction of hospitals, and developing a program of hospital construction as provided in section 71-2007, and (2) developing and administering a state plan for the construction of public and other nonprofit hospitals as provided in the State Hospital Survey and Construction Act.

Source: Laws 1947, c. 232, § 3, p. 734; Laws 1965, c. 421, § 2, p. 1350; Laws 1996, LB 1044, § 594; Laws 1997, LB 307, § 179; Laws 2007, LB296, § 508.
Operative date July 1, 2007.

71-2004 Department; powers and duties. In carrying out the purposes of the State Hospital Survey and Construction Act, the department is authorized and directed:

(1) To require such reports, make such inspections and investigations, and prescribe such regulations as it deems necessary;

(2) To provide such methods of administration, appoint an assistant director and other personnel of the division, and take such other action as may be necessary to comply with the requirements of the federal act and the regulations thereunder;

(3) To procure the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties;

(4) To the extent desirable to effectuate the purposes of the State Hospital Survey and Construction Act, to enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions, public or private;

(5) To accept on behalf of the state and to deposit with the State Treasurer any grant, gift, or contribution made to assist in meeting the cost of carrying out the purposes of the act and to expend the same for such purpose; and

(6) To match funds with federal grants when required in order to obtain such funds in carrying out the act.

Source: Laws 1947, c. 232, § 4, p. 734; Laws 1967, c. 450, § 1, p. 1397; Laws 1981, LB 545, § 21; Laws 2007, LB296, § 509.
Operative date July 1, 2007.

71-2006 Administration; appropriation by the Legislature; expenditures; certification by department. Such money as may be appropriated by the Legislature for the administration of the State Hospital Survey and Construction Act shall be expended upon proper certification by the department as provided by law.

Source: Laws 1947, c. 232, § 6, p. 736; Laws 1965, c. 421, § 4, p. 1351; Laws 2007, LB296, § 510.
Operative date July 1, 2007.

71-2007 Department; inventory; survey; planning; program. The department is authorized and directed to make an inventory of existing hospitals and medical facilities, including, but not restricted to, public, nonprofit and proprietary hospitals and other medical facilities, to accumulate pertinent comparable statistical data from existing hospitals and medical facilities, to survey the need for construction or expansion of hospitals and, on the basis of such statistical data, inventory and survey, and to develop a program for the construction or expansion of such public and other nonprofit hospitals and medical facilities as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital, clinic, and other essential health services without duplication or fragmentation of such facilities or services to all the people of the state.

Source: Laws 1947, c. 232, § 7, p. 736; Laws 1965, c. 421, § 5, p. 1351; Laws 1972, LB 1310, § 1; Laws 2007, LB296, § 511.
Operative date July 1, 2007.

71-2009 Survey and planning; application for federal funds; expenditure. The department is authorized to make application to the Surgeon General for federal funds to assist in carrying out the activities provided in the State Hospital Survey and Construction Act. Such funds shall be deposited in the state treasury and shall be available when appropriated for expenditure for carrying out the purposes of the act. Any such funds received and not expended for such purposes shall be repaid to the Treasury of the United States.

Source: Laws 1947, c. 232, § 9, p. 736; Laws 1965, c. 421, § 7, p. 1352; Laws 2007, LB296, § 512.
Operative date July 1, 2007.

71-2010 State plan; notice; hearing; submission to Surgeon General; hearing; approval of plans; review of program. The department shall prepare and submit to the Surgeon General a state plan which shall include the hospital construction program developed under the State Hospital Survey and Construction Act, and which shall provide for the establishment, administration, and operation of hospital and medical facility construction activities in accordance with the requirements of the federal act and regulations thereunder. The department shall, prior to the submission of such plan to the Surgeon General, give adequate publicity to a general description of all the provisions proposed to be included therein and hold a public hearing at which all persons or organizations with a legitimate interest in

such plan may be given an opportunity to express their views. After approval of the plan by the Surgeon General, the department shall make the plan, or plans, or a copy thereof, available upon request to all interested persons or organizations. The department shall from time to time review the hospital construction program and submit to the Surgeon General any modifications necessary, and may submit to the Surgeon General such modifications of the state plan, or plans, not inconsistent with the requirements of the federal act.

Source: Laws 1947, c. 232, § 10, p. 737; Laws 1965, c. 421, § 8, p. 1352; Laws 2007, LB296, § 513.
Operative date July 1, 2007.

71-2011 Department; maintenance and operation of hospitals and medical facilities; prescribe minimum standards. The department shall by regulation prescribe minimum standards for the maintenance and operation of hospitals and other medical facilities which receive federal aid for construction under the state plan.

Source: Laws 1947, c. 232, § 11, p. 737; Laws 1965, c. 421, § 9, p. 1353; Laws 2007, LB296, § 514.
Operative date July 1, 2007.

71-2013 Construction projects; federal funds; application; requirements. Applications for hospital construction projects for which federal funds are requested shall be submitted to the department and may be submitted by the state or any political subdivision thereof or by any public or nonprofit agency authorized to construct and operate a hospital. Each such application shall conform to federal and state requirements.

Source: Laws 1947, c. 232, § 13, p. 737; Laws 1965, c. 421, § 10, p. 1353; Laws 2007, LB296, § 515.
Operative date July 1, 2007.

71-2014 Construction projects; hearing; approval; recommendation of department. The department shall afford to every applicant for a construction project an opportunity for a fair hearing. If the department, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that a project application complies with the requirements of section 71-2013 and is otherwise in conformity with the state plan, such application shall be approved and shall be recommended and forwarded to the Surgeon General.

Source: Laws 1947, c. 232, § 14, p. 738; Laws 2007, LB296, § 516.
Operative date July 1, 2007.

71-2015 Construction projects; inspection; certification of work performed; payment due. From time to time the department shall inspect each construction project approved by the Surgeon General and, if the inspection so warrants, the department shall certify to the Surgeon General that work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant.

Source: Laws 1947, c. 232, § 15, p. 738; Laws 2007, LB296, § 517.
Operative date July 1, 2007.

(h) UNIFORM BILLING FORMS

71-2081 Hospital; submission of data; release by department. For each hospital uniform billing form on which a diagnosis code for the external cause of an injury, poisoning, or adverse effect is entered pursuant to section 71-2080, each hospital in this state shall submit data to the Department of Health and Human Services. Such data shall be submitted quarterly and shall include, but not be limited to, the diagnosis code for the external cause of an injury, poisoning, or adverse effect, other diagnosis codes, the procedure codes, admission date, discharge date, disposition code, and demographic data to include, but not be limited to, the birthdate, sex, city and county of residence, and zip code of residence for every patient discharged from a hospital, receiving outpatient services, or released from observation for whom a diagnosis code for the external cause of an injury, poisoning, or adverse effect is recorded pursuant to section 71-2080. This data shall be submitted to the department in written or computer form. The data provided to the department under this section shall be classified for release as determined by the department only in aggregate data reports created by the department. Such aggregate data reports shall be considered public documents.

Source: Laws 1993, LB 387, § 4; Laws 1996, LB 1044, § 610; Laws 2005, LB 301, § 41; Laws 2007, LB296, § 518.
Operative date July 1, 2007.

71-2082 Department; adopt rules and regulations. The Department of Health and Human Services shall adopt and promulgate rules and regulations governing the recordation, acquisition, compilation, and dissemination of all data collected pursuant to sections 71-2078 to 71-2082.

Source: Laws 1993, LB 387, § 5; Laws 1996, LB 1044, § 611; Laws 2007, LB296, § 519.
Operative date July 1, 2007.

(j) RECEIVERS

71-2084 Terms, defined. For purposes of sections 71-2084 to 71-2096:

- (1) Department means the Department of Health and Human Services; and
- (2) Health care facility means a health care facility subject to licensing under the Health Care Facility Licensure Act.

Source: Laws 1983, LB 274, § 1; R.S.1943, (1990), § 71-6001; Laws 1995, LB 406, § 60; Laws 1996, LB 1044, § 612; Laws 2000, LB 819, § 102; Laws 2007, LB296, § 520.
Operative date July 1, 2007.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

71-2086 Appointment of receiver; procedure; temporary receiver; purpose of receivership. (1) The department shall file the petition for the appointment of a receiver

provided for in section 71-2085 in the district court of the county where the health care facility is located and shall request that a receiver be appointed for the health care facility.

(2) The court shall expeditiously hold a hearing on the petition within seven days after the filing of the petition. The department shall present evidence at the hearing in support of the petition. The licensee, owner, or operator may also present evidence, and both parties may subpoena witnesses. The court may appoint a temporary receiver for the health care facility ex parte if the department, by affidavit, states that an emergency exists which presents an imminent danger of death or physical harm to the residents or patients of the health care facility. If a temporary receiver is appointed, notice of the petition and order shall be served on the licensee, owner, operator, or administrator of the health care facility within seventy-two hours after the entry of the order. The petition and order may be served by any method specified in section 25-505.01 or the court may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01. A hearing on the petition and temporary order shall be held within seventy-two hours after notice has been served unless the licensee, owner, or operator consents to a later date. After the hearing the court may terminate, continue, or modify the temporary order. If the court determines that the department did not have probable cause to submit the affidavit in support of the appointment of the temporary receiver, the court shall have the jurisdiction to determine and award compensatory damages against the state to the owner or operator. If the licensee, owner, or operator informs the court at or before the time set for hearing that he or she does not object to the petition, the court shall waive the hearing and at once appoint a receiver for the health care facility.

(3) The purpose of a receivership created under this section is to safeguard the health, safety, and continuity of care of residents and patients and to protect them from adverse health effects. A receiver shall not take any actions or assume any responsibilities inconsistent with this purpose. No person shall impede the operation of a receivership created under this section. After the appointment of a receiver, there shall be an automatic stay of any action that would interfere with the functioning of the health care facility, including, but not limited to, cancellation of insurance policies executed by the licensee, owner, or operator, termination of utility services, attachments or setoffs of resident trust funds or working capital accounts, and repossession of equipment used in the health care facility. The stay shall not apply to any licensure, certification, or injunctive action taken by the department.

Source: Laws 1983, LB 274, § 3; R.S.1943, (1990), § 71-6003; Laws 1995, LB 406, § 62; Laws 2007, LB296, § 521.
Operative date July 1, 2007.

71-2096 Interference with enforcement; penalty. (1) Any person who prevents or interferes with or attempts to impede in any way any duly authorized representative of the department in the lawful enforcement of sections 71-2084 to 71-2096 shall be guilty of a Class IV misdemeanor. For purposes of this subsection, lawful enforcement includes, but is not limited to, (a) contacting or interviewing any resident or patient of a health care facility in

private at any reasonable hour and without advance notice, (b) examining any relevant books or records of a health care facility, or (c) preserving evidence of any violations of sections 71-2084 to 71-2096.

(2) The county attorney of the county in which the health care facility is located or the Attorney General may be requested by the department to initiate prosecution.

Source: Laws 1983, LB 274, § 7; R.S.1943, (1990), § 71-6007; Laws 1995, LB 406, § 72; Laws 2007, LB296, § 522.
Operative date July 1, 2007.

(k) MEDICAID PROGRAM VIOLATIONS

71-2097 Terms, defined. For purposes of sections 71-2097 to 71-20,101:

(1) Civil penalties include any remedies required under federal law and include the imposition of monetary penalties;

(2) Department means the Department of Health and Human Services;

(3) Federal regulations for participation in the medicaid program means the regulations found in 42 C.F.R. parts 442 and 483, as amended, for participation in the medicaid program under Title XIX of the federal Social Security Act, as amended; and

(4) Nursing facility means any intermediate care facility or nursing facility, as defined in sections 71-420 and 71-424, which receives federal and state funds under Title XIX of the federal Social Security Act, as amended.

Source: Laws 1996, LB 1155, § 72; Laws 1997, LB 307, § 180; Laws 2000, LB 819, § 103; Laws 2007, LB296, § 523.
Operative date July 1, 2007.

71-2098 Civil penalties; department; powers. (1) The department may assess, enforce, and collect civil penalties against a nursing facility which the department has found in violation of federal regulations for participation in the medicaid program pursuant to the authority granted to the department under section 81-604.03.

(2) If the department finds that a violation is life threatening to one or more residents or creates a direct threat of serious adverse harm to one or more residents, a civil penalty shall be imposed for each day the deficiencies which constitute the violation exist. The department may assess an appropriate civil penalty for other violations based on the nature of the violation. Any monetary penalty assessed shall not be less than fifty dollars nor more than ten thousand dollars for each day the facility is found to be in violation of such federal regulations. Monetary penalties assessed shall include interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

Source: Laws 1996, LB 1155, § 73; Laws 1997, LB 307, § 181; Laws 2007, LB296, § 524.
Operative date July 1, 2007.

71-2099 Civil penalties; type and amount; criteria. The department shall adopt criteria for determining the type and amount of the civil penalty assessed under section

71-2098. Such criteria shall include, but need not be limited to, consideration of the following factors:

- (1) The period of time over which the violation occurred;
- (2) The frequency of the violation;
- (3) The nursing facility's history concerning the type of violation for which the civil penalty is assessed;
- (4) The nursing facility's intent or reason for the violation;
- (5) The effect, if any, of the violation on the health, safety, security, or welfare of the residents;
- (6) The existence of other violations, in combination with the violation for which the civil penalty is assessed, which increase the threat to the health, safety, security, rights, or welfare of the residents;
- (7) The accuracy, thoroughness, and availability of records regarding the violation, which the nursing facility is required to maintain; and
- (8) The number of additional related violations occurring within the same time span as the violation in question.

Source: Laws 1996, LB 1155, § 74; Laws 1997, LB 307, § 182; Laws 2007, LB296, § 525.
Operative date July 1, 2007.

71-20,100 Nursing Facility Penalty Cash Fund; created; use; investment. (1) The Nursing Facility Penalty Cash Fund is created. Monetary penalties collected by the department pursuant to section 71-2098 shall be remitted to the State Treasurer for credit to such fund. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The department shall adopt and promulgate rules and regulations which establish circumstances under which the department may distribute funds from the Nursing Facility Penalty Cash Fund to protect the health or property of individuals residing in nursing facilities which the department has found in violation of federal regulations for participation in the medicaid program. Circumstances considered as a basis for distribution from the fund include paying costs to:

- (a) Relocate residents to other facilities;
- (b) Maintain the operation of a nursing facility pending correction of violations;
- (c) Close a nursing facility; and
- (d) Reimburse residents for personal funds lost.

Source: Laws 1996, LB 1155, § 75; Laws 1997, LB 307, § 183; Laws 2007, LB296, § 526.
Operative date July 1, 2007.

Cross Reference

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

71-20,101 Rules and regulations. The department shall adopt and promulgate rules and regulations to carry out sections 71-2097 to 71-20,101, including rules and regulations for notice and appeal procedures.

Source: Laws 1996, LB 1155, § 76; Laws 1997, LB 307, § 184; Laws 2007, LB296, § 527.
Operative date July 1, 2007.

(1) NONPROFIT HOSPITAL SALE ACT

71-20,103 Terms, defined. For purposes of the Nonprofit Hospital Sale Act:

- (1) Department means the Department of Health and Human Services;
- (2) Hospital has the meaning found in section 71-419;
- (3) Acquisition means any acquisition by a person or persons of an ownership or controlling interest in a hospital, whether by purchase, merger, lease, gift, or otherwise, which results in a change of ownership or control of twenty percent or greater or which results in the acquiring person or persons holding a fifty percent or greater interest in the ownership or control of a hospital, but acquisition does not include the acquisition of an ownership or controlling interest in a hospital owned by a nonprofit corporation if the transferee (a) is a nonprofit corporation having a substantially similar charitable health care purpose as the transferor or is a governmental entity, (b) is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code or as a governmental entity, and (c) will maintain representation from the affected community on the local board; and
- (4) Person has the meaning found in section 71-5803.12.

Source: Laws 1996, LB 1188, § 2; Laws 1997, LB 307, § 185; Laws 1997, LB 798, § 1; Laws 2000, LB 819, § 104; Laws 2007, LB296, § 528.
Operative date July 1, 2007.

71-20,113 Applicability of act. Any acquisition of a hospital before April 16, 1996, and any acquisition in which an application for a certificate of need under the Nebraska Health Care Certificate of Need Act has been granted by the Department of Health and Human Services Regulation and Licensure before April 16, 1996, is not subject to the Nonprofit Hospital Sale Act.

Source: Laws 1996, LB 1188, § 12; Laws 2007, LB296, § 529.
Operative date July 1, 2007.

Cross Reference

Nebraska Health Care Certificate of Need Act, see section 71-5801.

ARTICLE 22

MATERNAL AND CHILD HEALTH

Section.

- 71-2201. Maternal and Child Health and Public Health Work Fund; created; investment.
- 71-2202. Maternal and Child Health and Public Health Work Fund; administration.

- 71-2203. Maternal and Child Health and Public Health Work Fund; disbursements; how made.
- 71-2207. Maternal and child health funds; how used.
- 71-2208. Maternal and child health; reports by Department of Health and Human Services; to whom made.

71-2201 Maternal and Child Health and Public Health Work Fund; created; investment. There is created a Maternal and Child Health and Public Health Work Fund in the treasury of the State of Nebraska, to be administered by the Department of Health and Human Services for maternal and child health and for public health work, as provided by law. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1935, Spec. Sess., c. 29, § 1, p. 178; C.S.Supp.,1941, § 81-5718; R.S.1943, § 81-609; Laws 1969, c. 584, § 72, p. 2388; Laws 1995, LB 7, § 76; Laws 1996, LB 1044, § 613; Laws 2007, LB296, § 530.
Operative date July 1, 2007.

Cross Reference

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

71-2202 Maternal and Child Health and Public Health Work Fund; administration. The Department of Health and Human Services shall administer the fund for maternal and child health and public health services throughout the State of Nebraska. Seventy-five percent of the fund shall be used for maternal and child health activities in this state, and twenty-five percent shall be used for public health work, if such amounts are needed therefor.

Source: Laws 1935, Spec. Sess., c. 29, § 2, p. 178; C.S.Supp.,1941, § 81-5719; R.S.1943, § 81-610; Laws 1996, LB 1044, § 614; Laws 2007, LB296, § 531.
Operative date July 1, 2007.

71-2203 Maternal and Child Health and Public Health Work Fund; disbursements; how made. Disbursements from the fund referred to in section 71-2201 shall be made upon vouchers signed by an authorized representative of the Department of Health and Human Services and warrants approved by the Director of Administrative Services.

Source: Laws 1935, Spec. Sess., c. 29, § 4, p. 178; C.S.Supp.,1941, § 81-5721; R.S.1943, § 81-611; Laws 1996, LB 1044, § 615; Laws 2007, LB296, § 532.
Operative date July 1, 2007.

71-2207 Maternal and child health funds; how used. The funds allocated for maternal and child health in this state shall be used and distributed subject to the supervision of the Department of Health and Human Services: (1) For promoting the health of mothers and children, especially in rural areas, suffering from some economic distress; (2) for the establishment, extension, and improvement of local maternal and child health services to be

administered by local child health units; and (3) for demonstration services in needy areas and among groups in special need. The department shall also cooperate with licensed physicians and surgeons and with nursing and welfare groups and organizations for the purposes herein expressed.

Source: Laws 1935, Spec. Sess., c. 31, § 3, p. 190; C.S.Supp.,1941, § 81-5725; R.S.1943, § 81-615; Laws 1996, LB 1044, § 617; Laws 2007, LB296, § 533.
Operative date July 1, 2007.

71-2208 Maternal and child health; reports by Department of Health and Human Services; to whom made. The Department of Health and Human Services shall make quarterly or more frequent reports of the administration of sections 71-2205 to 71-2208, and all expenditures thereunder, to the Chief of the Children's Bureau of the United States Department of Labor, and shall comply with requests for information from the Secretary of Labor of the United States or his or her agencies, if federal funds are granted to this state for the purposes mentioned in such sections.

Source: Laws 1935, Spec. Sess., c. 31, § 4, p. 190; C.S.Supp.,1941, § 81-5726; R.S.1943, § 81-616; Laws 1967, c. 437, § 2, p. 1344; Laws 1996, LB 1044, § 618; Laws 2007, LB296, § 534.
Operative date July 1, 2007.

ARTICLE 23

NEBRASKA PROSTITUTION INTERVENTION AND TREATMENT ACT

Section.

- 71-2304. Coordinated program of education and treatment; regional behavioral health funding; Department of Health and Human Services; duties.
71-2305. Rules and regulations.

71-2304 Coordinated program of education and treatment; regional behavioral health funding; Department of Health and Human Services; duties. (1) The Legislature shall appropriate funds to create a coordinated program of education and treatment for individuals that participate in prostitution-related activities as described in section 28-801.

(2) The Department of Health and Human Services, in consultation with the regional behavioral health authorities, shall distribute funds to regional behavioral health authorities that can demonstrate to the department a high incidence of prostitution within the behavioral health region. The department may consider the following criteria for regional behavioral health funding under this section:

(a) The number of criminal convictions for prostitution-related activities within the counties that comprise the regional behavioral health authority;

(b) Evidence that prostitution-related activities are impacting residential areas and businesses and the quality of life of residents in such areas and businesses is negatively impacted;

(c) The amount of local law enforcement resources devoted specifically to curtailing prostitution-related activity;

(d) Evidence that the regional behavioral health authorities consulted with recognized neighborhood and business associations within geographic proximity to concentrated areas of prostitution; and

(e) The amount of local subdivision treatment funding.

Each regional behavioral health authority may contract with qualifying public, private, or nonprofit entities for the provision of such education and treatment. Such qualifying entities may obtain additional funding from cities and counties to provide a coordinated program of treatment and education for individuals that participate in prostitution-related activities.

Source: Laws 2006, LB 1086, § 4; Laws 2007, LB296, § 535.
Operative date July 1, 2007.

71-2305 Rules and regulations. The Department of Health and Human Services shall adopt and promulgate rules and regulations to carry out the Nebraska Prostitution Intervention and Treatment Act.

Source: Laws 2006, LB 1086, § 5; Laws 2007, LB296, § 536.
Operative date July 1, 2007.

ARTICLE 24

DRUGS

(b) MAIL SERVICE PHARMACY LICENSURE ACT

Section.

71-2407. Mail service pharmacy license; requirements; fee.

71-2408. Department of Health and Human Services; disciplinary actions; violations; Attorney General; duties.

71-2409. Rules and regulations.

(c) EMERGENCY BOX DRUG ACT

71-2411. Terms, defined.

71-2412. Institutional pharmacy; requirements; emergency boxes; use; conditions.

(d) PAIN MANAGEMENT

71-2418. Legislative findings.

71-2419. Physician, nurse, or pharmacist; disciplinary action or criminal prosecution; limitation.

71-2420. Board of Medicine and Surgery; duties.

(e) RETURN OF DISPENSED DRUGS AND DEVICES

71-2421. Return of dispensed drugs and devices; conditions.

(f) CANCER DRUG REPOSITORY PROGRAM ACT

71-2423. Terms, defined.

(g) COMMUNITY HEALTH CENTER RELABELING AND REDISPENSING
71-2431. Community health center; relabeling and redispensing prescription drugs; requirements.

(h) CLANDESTINE DRUG LABS
71-2432. Terms, defined.

(i) IMMUNOSUPPRESSANT DRUG REPOSITORY PROGRAM ACT
71-2437. Terms, defined.

(b) MAIL SERVICE PHARMACY LICENSURE ACT

71-2407 Mail service pharmacy license; requirements; fee. (1) Any person operating a mail service pharmacy outside of the State of Nebraska shall obtain a mail service pharmacy license prior to shipping, mailing, or in any manner delivering dispensed prescription drugs as defined in section 38-2841 into the State of Nebraska.

(2) To be qualified to hold a mail service pharmacy license, a person shall:

(a) Hold a pharmacy license or permit issued by and valid in the state in which the person is located and from which such prescription drugs will be shipped, mailed, or otherwise delivered;

(b) Be located and operating in a state in which the requirements and qualifications for obtaining and maintaining a pharmacy license or permit are considered by the Department of Health and Human Services, with the approval of the Board of Pharmacy, to be substantially equivalent to the requirements of the Health Care Facility Licensure Act;

(c) Designate the Secretary of State as his, her, or its agent for service of process in this state; and

(d) Employ on a full-time basis at least one pharmacist who holds a current unrestricted pharmacist license issued under the Uniform Credentialing Act who shall be responsible for compliance by the mail service pharmacy with the Mail Service Pharmacy Licensure Act. The mail service pharmacy shall notify the department when such pharmacist is no longer employed by such pharmacy.

(3) To obtain a mail service pharmacy license, a person shall:

(a) File an application on a form developed by the department; and

(b) Pay a fee equivalent to the fee for a pharmacy license in the State of Nebraska pursuant to section 71-434.

(4) This section does not apply to prescription drugs mailed, shipped, or otherwise delivered by a pharmaceutical company to a laboratory for the purpose of conducting clinical research.

Source: Laws 1988, LB 350, § 2; Laws 1993, LB 536, § 81; Laws 1996, LB 1044, § 622; Laws 1999, LB 594, § 58; Laws 1999, LB 828, § 163; Laws 2001, LB 398, § 69; Laws 2003, LB 667, § 8; Laws 2007, LB296, § 537; Laws 2007, LB463, § 1193.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 537, with LB 463, section 1193, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

Uniform Credentialing Act, see section 38-101.

71-2408 Department of Health and Human Services; disciplinary actions; violations; Attorney General; duties. (1) The Department of Health and Human Services, after notice and an opportunity for a hearing, may deny, refuse renewal of, revoke, or otherwise discipline or restrict the license of a mail service pharmacy for (a) any discipline of the pharmacy license held by such pharmacy in another state pursuant to subdivision (2)(a) of section 71-2407, (b) any violation of the Mail Service Pharmacy Licensure Act or rules and regulations adopted and promulgated under the act, or (c) conduct by such pharmacy which in this state presents a threat to the public health and safety or a danger of death or physical harm.

(2) The department, upon the recommendation of the Board of Pharmacy, shall notify the Attorney General of any possible violations of the Mail Service Pharmacy Licensure Act. If the Attorney General has reason to believe that an out-of-state person is operating in violation of the act, he or she shall commence an action in the district court of Lancaster County to enjoin any such person from further mailing, shipping, or otherwise delivering prescription drugs into the State of Nebraska.

Source: Laws 1988, LB 350, § 3; Laws 1996, LB 1044, § 623; Laws 1999, LB 828, § 164; Laws 2003, LB 667, § 9; Laws 2007, LB296, § 538.
Operative date July 1, 2007.

71-2409 Rules and regulations. The Department of Health and Human Services shall, upon the recommendation of the Board of Pharmacy, adopt and promulgate rules and regulations necessary to carry out the Mail Service Pharmacy Licensure Act.

Source: Laws 1988, LB 350, § 4; Laws 1996, LB 1044, § 624; Laws 1999, LB 828, § 165; Laws 2003, LB 667, § 10; Laws 2007, LB296, § 539.
Operative date July 1, 2007.

(c) EMERGENCY BOX DRUG ACT

71-2411 Terms, defined. For purposes of the Emergency Box Drug Act:

(1) Authorized personnel shall mean any medical doctor, doctor of osteopathy, registered nurse, licensed practical nurse, pharmacist, or physician's assistant;

(2) Department shall mean the Department of Health and Human Services;

(3) Drug shall mean any prescription drug or device or legend drug or device defined under section 38-2841, any nonprescription drug as defined under section 38-2829, any controlled substance as defined under section 28-405, or any device as defined under section 38-2814;

(4) Emergency box drugs shall mean drugs required to meet the immediate therapeutic needs of patients when the drugs are not available from any other authorized source in time to sufficiently prevent risk of harm to such patients by the delay resulting from obtaining such drugs from such other authorized source;

(5) Institution shall mean an intermediate care facility, an intermediate care facility for the mentally retarded, a mental health center, a nursing facility, and a skilled nursing facility, as such terms are defined in sections 71-420, 71-421, 71-423, 71-424, and 71-429;

(6) Institutional pharmacy shall mean the physical portion of an institution engaged in the compounding, dispensing, and labeling of drugs which is operating pursuant to a pharmacy license issued by the department under the Health Care Facility Licensure Act;

(7) Multiple dose vial shall mean any bottle in which more than one dose of a liquid drug is stored or contained; and

(8) Supplying pharmacist shall mean the pharmacist in charge of an institutional pharmacy or a pharmacist who provides emergency box drugs to an institution pursuant to the Emergency Box Drug Act. Supplying pharmacist shall not include any agent or employee of the supplying pharmacist who is not a pharmacist.

Source: Laws 1994, LB 1210, § 183; Laws 1996, LB 1044, § 625; Laws 1997, LB 608, § 16; Laws 2000, LB 819, § 106; Laws 2001, LB 398, § 70; Laws 2007, LB296, § 540; Laws 2007, LB463, § 1194.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 540, with LB 463, section 1194, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

71-2412 Institutional pharmacy; requirements; emergency boxes; use; conditions. (1) Each institutional pharmacy shall be directed by a pharmacist, referred to as the pharmacist in charge as defined in section 38-2833, who is licensed to engage in the practice of pharmacy in this state.

(2) For an institution that does not have an institutional pharmacy or during such times as an institutional pharmacy may be unattended by a pharmacist, drugs may be administered to residents of the institution by authorized personnel of the institution from the contents of emergency boxes located within such facility if such drugs and boxes meet all of the following requirements:

(a) All emergency box drugs shall be provided by and all emergency boxes containing such drugs shall be sealed by a supplying pharmacist with the seal on such emergency box to be of such a nature that it can be easily identified if it has been broken;

(b) Emergency boxes shall be stored in a medication room or other secured area within the institution. Only the supplying pharmacist or authorized personnel of the institution shall obtain access to such room or secured area, by key or combination, in order to prevent unauthorized access and to ensure a proper environment for preservation of the emergency box drugs;

(c) The exterior of each emergency box shall be labeled so as to clearly indicate that it is an emergency box for use in emergencies only. The label shall contain a listing of the drugs contained in the box, including the name, strength, route of administration, quantity, and

expiration date of each drug, and the name, address, and telephone number of the supplying pharmacist;

(d) The expiration date of an emergency box shall be the earliest date of expiration of any drug contained in the box;

(e) All emergency boxes shall be inspected by the supplying pharmacist or another pharmacist designated by the supplying pharmacist at least once every thirty days to determine the expiration date and quantity of the drugs in the box. Every inspection shall be documented and the record retained by the institution for a period of two years;

(f) An emergency box shall not contain any multiple dose vials and shall not contain more than ten drugs which are controlled substances; and

(g) All drugs in emergency boxes shall be in the original manufacturer's containers or shall be repackaged by the supplying pharmacist and shall include the manufacturer's name, lot number, drug name, strength, dosage form, NDC number, route of administration, and expiration date on a typewritten label. Any drug which is repackaged shall contain on the label the calculated expiration date. For purposes of the Emergency Box Drug Act, calculated expiration date has the same meaning as in subdivision (7)(b) of section 38-2884.

Source: Laws 1994, LB 1210, § 184; Laws 2002, LB 1062, § 52; Laws 2007, LB463, § 1195.
Operative date December 1, 2008.

(d) PAIN MANAGEMENT

71-2418 Legislative findings. (1) The Legislature finds that many controlled substances have useful and legitimate medical and scientific purposes and are necessary to maintain the health and general welfare of the people of Nebraska. Principles of quality medical practice dictate that the people of Nebraska have access to appropriate and effective pain relief.

(2) The Legislature finds that the appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain. The Legislature therefor encourages physicians to view effective pain management as a part of quality medical practice for all patients with pain, acute or chronic, including those patients who experience pain as a result of terminal illness.

(3) The Legislature finds that a physician should be able to prescribe, dispense, or administer a controlled substance in excess of the recommended dosage for the treatment of pain so long as such dosage is not administered for the purpose of causing, or the purpose of assisting in causing, death for any reason and so long as it conforms to policies and guidelines for the treatment of pain adopted by the Board of Medicine and Surgery.

(4) The Legislature finds that a health care facility, hospice, or third-party payor should not forbid or restrict the use of controlled substances appropriately administered for the treatment of pain.

Source: Laws 1999, LB 226, § 1; Laws 2007, LB463, § 1196.
Operative date December 1, 2008.

71-2419 Physician, nurse, or pharmacist; disciplinary action or criminal prosecution; limitation. A physician licensed under the Medicine and Surgery Practice Act who prescribes, dispenses, or administers or a nurse licensed under the Nurse Practice Act or pharmacist licensed under the Pharmacy Practice Act who administers or dispenses a controlled substance in excess of the recommended dosage for the treatment of pain shall not be subject to discipline under the Uniform Credentialing Act or criminal prosecution under the Uniform Controlled Substances Act when: (1) In the judgment of the physician, appropriate pain management warrants such dosage; (2) the controlled substance is not administered for the purpose of causing, or the purpose of assisting in causing, death for any reason; and (3) the administration of the controlled substance conforms to policies and guidelines for the treatment of pain adopted by the Board of Medicine and Surgery.

Source: Laws 1999, LB 226, § 2; Laws 2001, LB 398, § 73; Laws 2007, LB463, § 1197.
Operative date December 1, 2008.

Cross Reference

Medicine and Surgery Practice Act, see section 38-2001.

Pharmacy Practice Act, see section 38-2801.

Uniform Controlled Substances Act, see section 28-401.01.

Uniform Credentialing Act, see section 38-101.

71-2420 Board of Medicine and Surgery; duties. The Board of Medicine and Surgery shall adopt policies and guidelines for the treatment of pain to ensure that physicians who are engaged in the appropriate treatment of pain are not subject to disciplinary action, and the board shall consider policies and guidelines developed by national organizations with expertise in pain management for this purpose.

Source: Laws 1999, LB 226, § 3; Laws 2007, LB463, § 1198.
Operative date December 1, 2008.

(e) RETURN OF DISPENSED DRUGS AND DEVICES

71-2421 Return of dispensed drugs and devices; conditions. (1) To protect the public safety, dispensed drugs or devices may be returned to the dispensing pharmacy only under the following conditions:

(a) For immediate destruction by a pharmacist, except that drugs and devices dispensed to residents of a long-term care facility shall be destroyed on the site of the long-term care facility;

(b) In response to a recall by the manufacturer, packager, or distributor;

(c) If a device is defective or malfunctioning; or

(d) Return from a long-term care facility for credit, except that:

(i) No controlled substance may be returned;

(ii) The decision to accept the return of the dispensed drug or device shall rest solely with the pharmacist;

(iii) The dispensed drug or device shall have been in the control of the long-term care facility at all times;

(iv) The dispensed drug or device shall be in the original and unopened labeled container with a tamper-evident seal intact, as dispensed by the pharmacy. Such container shall bear the expiration date or calculated expiration date and lot number; and

(v) Tablets or capsules shall have been dispensed in a unit dose with a tamper-evident container which is impermeable to moisture and approved by the Board of Pharmacy.

(2) Returned dispensed drugs or devices shall not be retained in inventory nor made available for subsequent dispensing, except as provided in subdivision (1)(d) of this section.

(3) For purposes of this section:

(a) Calculated expiration date means an expiration date on the prepackaged product which is not greater than twenty-five percent of the time between the date of repackaging and the expiration date of the bulk container nor greater than six months from the date of repackaging;

(b) Dispense, drugs, and devices are defined in the Pharmacy Practice Act; and

(c) Long-term care facility does not include an assisted-living facility as defined in section 71-406.

Source: Laws 1999, LB 333, § 1; Laws 2001, LB 398, § 74; Laws 2002, LB 1062, § 53; Laws 2007, LB247, § 51; Laws 2007, LB463, § 1199.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 51, with LB 463, section 1199, to reflect all amendments.

Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Pharmacy Practice Act, see section 38-2801.

(f) CANCER DRUG REPOSITORY PROGRAM ACT

71-2423 Terms, defined. For purposes of the Cancer Drug Repository Program Act:

(1) Cancer drug means a prescription drug used to treat (a) cancer or its side effects or (b) the side effects of a prescription drug used to treat cancer or its side effects;

(2) Department means the Department of Health and Human Services;

(3) Health care facility has the definition found in section 71-413;

(4) Health clinic has the definition found in section 71-416;

(5) Hospital has the definition found in section 71-419;

(6) Participant means a physician's office, pharmacy, hospital, or health clinic that has elected to voluntarily participate in the program and that accepts donated cancer drugs under the rules and regulations adopted and promulgated by the department for the program;

(7) Pharmacy has the definition found in section 71-425;

(8) Physician's office means the office of a person licensed to practice medicine and surgery or osteopathic medicine and surgery;

(9) Prescribing practitioner means a health care practitioner licensed under the Uniform Credentialing Act who is authorized to prescribe cancer drugs;

(10) Prescription drug has the definition found in section 38-2841; and

(11) Program means the cancer drug repository program established pursuant to section 71-2424.

Source: Laws 2003, LB 756, § 2; Laws 2005, LB 331, § 2; Laws 2007, LB296, § 541; Laws 2007, LB463, § 1200.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 541, with LB 463, section 1200, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

(g) COMMUNITY HEALTH CENTER RELABELING AND REDISPENSING

71-2431 Community health center; relabeling and redispensing prescription drugs; requirements. (1) Prescription drugs or devices which have been delivered to a community health center for dispensing to a patient of such health center pursuant to a valid prescription, but which are not dispensed or administered to such patient, may be delivered to a pharmacist or pharmacy under contract with the community health center for relabeling and redispensing to another patient of such health center pursuant to a valid prescription if:

(a) The decision to accept delivery of the drug or device for relabeling and redispensing rests solely with the contracting pharmacist or pharmacy;

(b) The drug or device has been in the control of the community health center at all times;

(c) The drug or device is in the original and unopened labeled container with a tamper-evident seal intact. Such container shall bear the expiration date or calculated expiration date and lot number; and

(d) The relabeling and redispensing is not otherwise prohibited by law.

(2) For purposes of this section:

(a) Administer has the definition found in section 38-2806;

(b) Calculated expiration date has the definition found in section 38-2884;

(c) Community health center means a community health center established pursuant to the Health Centers Consolidation Act of 1996, 42 U.S.C. 201 et seq., as such act existed on May 7, 2005;

(d) Deliver or delivery has the definition found in section 38-2813;

(e) Dispense or dispensing has the definition found in section 38-2817;

(f) Prescription has the definition found in section 38-2840; and

(g) Prescription drug or device has the definition found in section 38-2841.

(3) The Department of Health and Human Services, in consultation with the Board of Pharmacy, may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2005, LB 382, § 14; Laws 2007, LB296, § 542; Laws 2007, LB463, § 1201.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 542, with LB 463, section 1201, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

(h) CLANDESTINE DRUG LABS

71-2432 Terms, defined. For purposes of sections 71-2432 to 71-2435:

(1) Clandestine drug lab means any area where glassware, heating devices, or other equipment or precursors, solvents, or related articles or reagents are used to unlawfully manufacture methamphetamine;

(2) Contaminated property means an enclosed area of any property or portion thereof intended for human habitation or use which has been contaminated by chemicals, chemical residue, methamphetamine, methamphetamine residue, or other substances from a clandestine drug lab;

(3) Department means the Department of Health and Human Services;

(4) Law enforcement agency has the meaning found in section 81-1401;

(5) Local public health department has the meaning found in section 71-1626;

(6) Methamphetamine means methamphetamine, its salts, optical isomers, and salts of its isomers; and

(7) Rehabilitate or rehabilitation means all actions necessary to ensure that contaminated property is safe for human habitation or use.

Source: Laws 2006, LB 915, § 1; Laws 2007, LB296, § 543.
Operative date July 1, 2007.

(i) IMMUNOSUPPRESSANT DRUG REPOSITORY PROGRAM ACT

71-2437 Terms, defined. For purposes of the Immunosuppressant Drug Repository Program Act:

(1) Department means the Department of Health and Human Services;

(2) Immunosuppressant drug means anti-rejection drugs that are used to reduce the body's immune system response to foreign material and inhibit a transplant recipient's immune system from rejecting a transplanted organ. Immunosuppressant drugs are available only as prescription drugs and come in tablet, capsule, and liquid forms. The recommended dosage depends on the type and form of immunosuppressant drug and the purpose for which it is being used. Immunosuppressant drug does not include drugs prescribed for inpatient use;

(3) Participant means a transplant center that has elected to voluntarily participate in the program, that has submitted written notification to the department of its intent to participate in the program, and that accepts donated immunosuppressant drugs under the rules and regulations adopted and promulgated by the department for the program;

(4) Prescribing practitioner means a health care practitioner licensed under the Uniform Credentialing Act who is authorized to prescribe immunosuppressant drugs;

(5) Prescription drug has the definition found in section 38-2841;

(6) Program means the immunosuppressant drug repository program established pursuant to section 71-2438;

(7) Transplant center means a hospital that operates an organ transplant program, including qualifying patients for transplant, registering patients on the national waiting list, performing transplant surgery, and providing care before and after transplant; and

(8) Transplant program means the organ-specific facility within a transplant center. A transplant center may have transplant programs for the transplantation of hearts, lungs, livers, kidneys, pancreata, or intestines.

Source: Laws 2006, LB 994, § 43; Laws 2007, LB296, § 544; Laws 2007, LB463, § 1202.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 544, with LB 463, section 1202, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

ARTICLE 25

POISONS

(a) GENERAL PROVISIONS

Section.

- 71-2503. Poisons; sale; duty of vendor to record in Poison Register.
- 71-2505. Poisons; sale; restrictions not applicable to physicians.
- 71-2506. Poisons; sale; revised schedule of poisons; preparation; notice; hearing; appeal.
- 71-2509. Poisons; restriction to sale upon prescription; power of Department of Health and Human Services.
- 71-2510. Poisons; sale upon prescription only; exceptions.
- 71-2511. Poisons; sale; violations; penalty.

(a) GENERAL PROVISIONS

71-2503 Poisons; sale; duty of vendor to record in Poison Register. Every person who disposes of or sells at retail or furnishes any of the poisons in section 71-2501 or any other poisons which the Department of Health and Human Services may from time to time designate, as provided in section 71-2506, shall, before delivery, enter in a book kept for that purpose, to be known as the Poison Register, the date of sale, the name and address of the purchaser, the name and quantity of the poison, the purpose for which it is purchased, and the name of the dispenser, and such record shall be signed by the person to whom the poison is delivered. Such record shall be kept in the form prescribed by the department, and the book containing the same must be always open for inspection by the proper authorities, and must be preserved for at least two years after the last entry.

Source: Laws 1941, c. 141, § 14, p. 563; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-627; Laws 1996, LB 1044, § 626; Laws 2007, LB296, § 545.
Operative date July 1, 2007.

71-2505 Poisons; sale; restrictions not applicable to physicians. The provisions of sections 71-2503 and 71-2504 shall not apply to the dispensing of poisons or preparation of medicines by those practitioners credentialed under the Uniform Credentialing Act who are duly authorized by law to administer or professionally use those poisons specifically named in section 71-2501.

Source: Laws 1941, c. 141, § 14, p. 564; C.S.Supp., 1941, § 81-933; R.S. 1943, § 81-629; Laws 2007, LB463, § 1203.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

71-2506 Poisons; sale; revised schedule of poisons; preparation; notice; hearing; appeal. Whenever, in the judgment of the Department of Health and Human Services, it shall become necessary for the protection of the public, to add any poison, not specifically enumerated in section 71-2501, the department shall have printed a revised schedule of all poisons coming under section 71-2501. The department shall forward by mail one copy to each person registered upon its books and to every person applying for same, and the revised schedule shall carry an effective date for the new poisons added. No poison shall be added by the department under this section unless the same shall be as toxic in its effect as any of the poisons enumerated under section 71-2501. Whenever the department shall propose to bring any additional poisons under such section, the proposal shall be set down for hearing. At least ten days' notice of such hearing shall be given by the department. The notice shall designate the poison to be added and shall state the time and place of the hearing. Such notice shall be given by such means as the department shall determine to be reasonably calculated to notify the various interested parties. The department shall have the power to adopt and promulgate such rules and regulations with respect to the conduct of such hearings as may be necessary. Any person aggrieved by any order of the department passed pursuant to this section may appeal such order, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1941, c. 141, § 14, p. 564; C.S.Supp., 1941, § 81-933; R.S. 1943, § 81-630; Laws 1988, LB 352, § 127; Laws 1996, LB 1044, § 627; Laws 2007, LB296, § 546.
Operative date July 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

71-2509 Poisons; restriction to sale upon prescription; power of Department of Health and Human Services. The Department of Health and Human Services may, by regulation, whenever such action becomes necessary for the protection of the public, prohibit the sale of any poison, subject to the provisions of this section, except upon the original written order or prescription of those practitioners credentialed under the Uniform Credentialing Act who are duly authorized by law to administer or professionally use those poisons specifically

named in section 71-2501. Whenever in the opinion of the department it is in the interest of the public health, the department is empowered to adopt rules and regulations, not inconsistent with sections 71-2501 to 71-2511, further restricting or prohibiting the retail sale of any poison. The rules and regulations must be applicable to all persons alike, and it shall be the duty of the department, upon request, to furnish any person, authorized by sections 71-2501 to 71-2511 to sell or dispense any poisons, with a list of all articles, preparations, and compounds the sale of which is prohibited or regulated by such sections.

Source: Laws 1941, c. 141, § 14, p. 565; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-633; Laws 1996, LB 1044, § 628; Laws 2007, LB296, § 547; Laws 2007, LB463, § 1204.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 547, with LB 463, section 1204, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

71-2510 Poisons; sale upon prescription only; exceptions. The provisions of sections 71-2502 to 71-2511 shall not apply to sales of poisons made to those practitioners credentialed under the Uniform Credentialing Act who are duly authorized by law to administer or professionally use those poisons specifically named in section 71-2501, to sales made by any manufacturer, wholesale dealer, or licensed pharmacist to another manufacturer, wholesale dealer, or licensed pharmacist, to a hospital, college, school, or scientific or public institution, or to any person using any of such poisons in the arts or for industrial, manufacturing, or agricultural purposes and believed to be purchasing any poison for legitimate use, or to the sales of pesticides used in agricultural and industrial arts or products used for the control of insect or animal pests or weeds or fungus diseases, if in all such cases, except sales for use in industrial arts, manufacturing, or processing, the poisons are labeled in accordance with the provisions of section 71-2502.

Source: Laws 1941, c. 141, § 14, p. 565; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-634; Laws 1993, LB 588, § 36; Laws 2007, LB463, § 1205.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

71-2511 Poisons; sale; violations; penalty. Any person, partnership, limited liability company, association, or corporation violating any of the provisions of sections 71-2502 to 71-2511 or any of the rules or regulations adopted and promulgated by the Department of Health and Human Services pursuant to sections 71-2502 to 71-2511 shall be deemed guilty of a Class V misdemeanor.

Source: Laws 1941, c. 141, § 14, p. 566; C.S.Supp.,1941, § 81-993; R.S.1943, § 81-635; Laws 1977, LB 39, § 166; Laws 1993, LB 121, § 431; Laws 1996, LB 1044, § 629; Laws 2007, LB296, § 548.
Operative date July 1, 2007.

ARTICLE 26

STATE BOARD OF HEALTH

Section.

- 71-2610. Board; advise Division of Public Health of the Department of Health and Human Services.
- 71-2610.01. Board; powers and duties.
- 71-2617. Health and Human Services Reimbursement Fund; created; purpose.
- 71-2619. Fees; establish; disposition.
- 71-2620. Agreements for laboratory tests; contents.
- 71-2621. Fees; laboratory tests and services; credited to Health and Human Services Cash Fund.
- 71-2622. Private water supply; private sewage disposal facilities; inspection; fees.

71-2610 Board; advise Division of Public Health of the Department of Health and Human Services. The State Board of Health shall advise the Division of Public Health of the Department of Health and Human Services regarding:

- (1) Rules and regulations for the government of the division;
- (2) The policies of the division as they relate to support provided to the board;
- (3) The policies of the division concerning the professions and occupations described in section 71-2610.01;
- (4) Communication and cooperation among the professional boards; and
- (5) Plans of organization or reorganization of the division.

Source: Laws 1953, c. 335, § 16, p. 1104; Laws 1981, LB 249, § 2; Laws 1982, LB 449, § 8; Laws 1982, LB 450, § 7; Laws 1982, LB 448, § 7; Laws 1987, LB 473, § 41; Laws 1996, LB 1044, § 632; Laws 2003, LB 56, § 6; Laws 2007, LB296, § 549.
Operative date July 1, 2007.

71-2610.01 Board; powers and duties. The State Board of Health shall:

- (1) Adopt and promulgate rules and regulations for the government of the professions and occupations licensed, certified, registered, or issued permits by the Division of Public Health of the Department of Health and Human Services, including rules and regulations necessary to implement laws enforced by the division. These professions and occupations are those subject to the Asbestos Control Act, the Radiation Control Act, the Residential Lead-Based Paint Professions Practice Act, the Uniform Controlled Substances Act, the Uniform Credentialing Act, or the Wholesale Drug Distributor Licensing Act;
- (2) Serve in an advisory capacity for other rules and regulations adopted and promulgated by the division, including those for health care facilities and environmental health services;
- (3) Carry out its powers and duties under the Nebraska Regulation of Health Professions Act;
- (4) Appoint and remove for cause members of health-related professional boards as provided in sections 38-158 to 38-167;

(5) At the discretion of the board, help mediate issues related to the regulation of health care professions except issues related to the discipline of health care professionals; and

(6) Have the authority to participate in the periodic review of the regulation of health care professions.

All funds rendered available by law may be used by the board in administering and effecting such purposes.

Source: Laws 1981, LB 249, § 3; Laws 1992, LB 1019, § 78; Laws 1996, LB 1044, § 633; Laws 1997, LB 307, § 186; Laws 1998, LB 1073, § 124; Laws 2000, LB 1115, § 71; Laws 2003, LB 56, § 7; Laws 2005, LB 256, § 93; Laws 2007, LB296 § 550; Laws 2007, LB463, § 1206.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 550, with LB 463, section 1206, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Asbestos Control Act, see section 71-6317.

Boards:

Appointment, see section 38-158 et seq.

Enumerated, see section 38-167.

Nebraska Regulation of Health Professions Act, see section 71-6201.

Radiation Control Act, see section 71-3519.

Residential Lead-Based Paint Professions Practice Act, see section 71-6318.

Uniform Controlled Substances Act, see section 28-401.01.

Uniform Credentialing Act, see section 38-101.

Wholesale Drug Distributor Licensing Act, see section 71-7427.

71-2617 Health and Human Services Reimbursement Fund; created; purpose. There is hereby created in the Department of Health and Human Services a cash fund to be known as the Health and Human Services Reimbursement Fund. Any money in the Department of Health and Human Services Regulation and Licensure Reimbursement Fund on July 1, 2007, shall be transferred to the Health and Human Services Reimbursement Fund. The fund shall be used for payment of services performed for the department for inspection and licensing of hospitals and nursing homes under Title XIX of the federal Social Security Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1971, LB 224, § 1; Laws 1996, LB 1044, § 634; Laws 2007, LB296, § 551.
Operative date July 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.

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

71-2619 Fees; establish; disposition. (1) The Department of Health and Human Services may by regulation establish fees to defray the costs of providing specimen containers, shipping outfits, and related supplies and fees to defray the costs of certain laboratory examinations as requested by individuals, firms, corporations, or governmental agencies in the state. Fees for the provision of certain classes of shipping outfits or specimen containers

shall be no more than the actual cost of materials, labor, and delivery. Fees for the provision of shipping outfits may be made when no charge is made for service.

(2) Fees may be established by regulation for chemical or microbiological examinations of various categories of water samples. Fees established for examination of water to ascertain qualities for domestic, culinary, and associated uses shall be set to defray no more than the actual cost of the tests in the following categories: (a) Inorganic chemical assays; (b) organic pollutants; and (c) bacteriological examination to indicate sanitary quality as coliform density by membrane filter test or equivalent test.

(3) Fees for examinations of water from lakes, streams, impoundments, or similar sources, from wastewaters, or from ground water for industrial or agricultural purposes may be charged in amounts established by regulation but shall not exceed one and one-half times the limits set by regulation for examination of domestic waters.

(4) Fees may be established by regulation for chemical or microbiological examinations of various categories of samples to defray no more than the actual cost of testing. Such fees may be charged for:

- (a) Any specimen submitted for radiochemical analysis or characterization;
- (b) Any material submitted for chemical characterization or quantitation; and
- (c) Any material submitted for microbiological characterization.

(5) Fees may be established by regulation for the examinations of certain categories of biological and clinical specimens to defray no more than the actual costs of testing. Such fees may be charged for examinations pursuant to law or regulation of:

(a) Any specimen submitted for chemical examination for assessment of health status or functional impairment;

(b) Any specimen submitted for microbiological examination which is not related to direct human contact with the microbiological agent; and

(c) A specimen submitted for microbiological examination or procedure by an individual, firm, corporation, or governmental unit other than the department.

(6) The department shall not charge fees for tests that include microbiological isolation, identification examination, or other laboratory examination for the following:

(a) A contagious disease when the department is authorized by law or regulation to directly supervise the prevention, control, or surveillance of such contagious disease;

(b) Any emergency when the health of the people of any part of the state is menaced or exposed pursuant to section 71-502; and

(c) When adopting or enforcing special quarantine and sanitary regulations authorized by the department.

(7) Combinations of different tests or groups of tests submitted together may be offered at rates less than those set for individual tests as allowed in this section and shall defray the actual costs.

(8) Fees may be established by regulation to defray no more than the actual costs of conducting qualifying inspections in order to make laboratory agreements between the

department and laboratories other than the Department of Health and Human Services Laboratory for the purpose of conducting analyses of drinking water as prescribed in section 71-5306. The inspection fees shall be collected on an annual schedule from those laboratories which enter into an agreement with the department for the purpose of conducting laboratory analyses of water. Such fees shall not exceed the amount in the following categories: (a) Bacteriological examination agreement, one hundred and fifty dollars; (b) inorganic chemical analyses agreement, one hundred dollars; (c) heavy metal analyses agreement, two hundred dollars; (d) organic chemical analyses agreement, two hundred dollars; and (e) radiochemical analyses agreement, two hundred dollars.

(9) All fees collected pursuant to this section shall be deposited in the state treasury and credited to the Health and Human Services Cash Fund.

Source: Laws 1973, LB 583, § 2; Laws 1983, LB 617, § 21; Laws 1986, LB 1047, § 4; Laws 1996, LB 1044, § 636; Laws 2007, LB296, § 552.
Operative date July 1, 2007.

71-2620 Agreements for laboratory tests; contents. The Department of Health and Human Services may enter into agreements, not exceeding one year in duration, with any other governmental agency relative to the provision of certain laboratory tests and services to the agency. Such services shall be provided as stipulated in the agreement and for such fee, either lump sum or by the item, as is mutually agreed upon and as complies with the provisions of section 71-2619. All laboratories performing human genetic testing for clinical diagnosis and treatment purposes shall be accredited by the College of American Pathologists or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the college.

Source: Laws 1973, LB 583, § 3; Laws 1996, LB 1044, § 637; Laws 2001, LB 432, § 11; Laws 2007, LB296, § 553.
Operative date July 1, 2007.

71-2621 Fees; laboratory tests and services; credited to Health and Human Services Cash Fund. All fees collected for laboratory tests and services pursuant to sections 71-2619 and 71-2620 shall be paid into the state treasury and by the State Treasurer credited to the Health and Human Services Cash Fund, which shall be used to partially defray the costs of labor, operations, supplies, and materials in the operations of the Department of Health and Human Services.

Source: Laws 1973, LB 583, § 4; Laws 1996, LB 1044, § 638; Laws 2007, LB296, § 554.
Operative date July 1, 2007.

71-2622 Private water supply; private sewage disposal facilities; inspection; fees. The Department of Health and Human Services shall collect a fee of not less than sixty nor more than one hundred dollars, as determined by regulation, for each inspection of private water supply or private sewage disposal facilities requested of and made by the department in order for the person requesting the inspection to qualify for any type of commercial loan, guarantee, or other type of payment or benefit from any commercial agency or enterprise

to the person applying for or receiving the same or to meet the requirements of any federal governmental agency, including, but not limited to, the Farmers Home Administration, the Federal Housing Administration, and the United States Department of Veterans Affairs, that such an inspection be conducted as a condition of applying for or receiving any type of grant, loan, guarantee, or other type of payment or benefit from such agency to the person applying for or receiving the same. All fees so collected shall be paid into the state treasury and by the State Treasurer credited to the Health and Human Services Cash Fund.

Source: Laws 1973, LB 583, § 5; Laws 1978, LB 814, § 1; Laws 1983, LB 617, § 22; Laws 1991, LB 2, § 13; Laws 1996, LB 1044, § 639; Laws 2007, LB296, § 555.
Operative date July 1, 2007.

ARTICLE 31

RECREATION CAMPS

Section.

71-3101. Terms, defined.

71-3102. Permit; application; issuance; fees; disposition.

71-3104. Permit; revocation; grounds.

71-3101 Terms, defined. As used in sections 71-3101 to 71-3107, unless the context otherwise requires:

(1) Recreation camp shall mean one or more temporary or permanent tents, buildings, structures, or site pads, together with the tract of land appertaining thereto, established or maintained for more than a forty-eight-hour period as living quarters or sites used for purposes of sleeping or the preparation and the serving of food extending beyond the limits of a family group for children or adults, or both, for recreation, education, or vacation purposes, and including facilities located on either privately or publicly owned lands except hotels or inns;

(2) Person shall mean any individual or group of individuals, association, partnership, limited liability company, or corporation; and

(3) Department shall mean the Department of Health and Human Services.

Source: Laws 1959, c. 328, § 1, p. 1193; Laws 1993, LB 121, § 432; Laws 1996, LB 1044, § 641; Laws 1997, LB 622, § 106; Laws 2007, LB296, § 556.
Operative date July 1, 2007.

71-3102 Permit; application; issuance; fees; disposition. Before any person shall directly or indirectly operate a recreation camp he or she shall make an application to the department and receive a valid permit for the operation of such camp. Application for such a permit shall be made at least thirty days prior to the proposed operation of the camp and shall be on forms supplied by the department upon request. The application shall be in such form and contain such information as the department may deem necessary to its determination that the recreation camp will be operated and maintained in such a manner as to protect and

preserve the health and safety of the persons using the camp and shall be accompanied by an annual fee. The department may establish fees by regulation to defray the actual costs of issuing the permit, conducting inspections, and other expenses incurred by the department in carrying out this section. If the applicant is an individual, the application shall include the applicant's social security number. Where a person operates or is seeking to operate more than one recreation camp, a separate application shall be made for each camp. Such a permit shall not be transferable or assignable. It shall expire one year from the date of its issuance, upon a change of operator of the camp, or upon revocation. If the department finds, after investigation, that the camp or the proposed operation thereof conforms, or will conform, to the minimum standards for recreation camps, a permit on a form prescribed by the department shall be issued for operation of the camp. All fees shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund.

Source: Laws 1959, c. 328, § 2, p. 1193; Laws 1965, c. 419, § 7, p. 1345; Laws 1978, LB 813, § 2; Laws 1996, LB 1044, § 642; Laws 1997, LB 622, § 107; Laws 1997, LB 752, § 179; Laws 2007, LB296, § 557.
Operative date July 1, 2007.

71-3104 Permit; revocation; grounds. (1) A permit may be temporarily suspended by the department for failure to protect the health and safety of the occupants of the camp or failure to comply with the camp regulations prescribed by the department.

(2) A permit may be revoked at any time, after notice and opportunity for a fair hearing held by the department, if it is found that the camp for which the permit is issued is maintained or operated in violation of law or of any regulations applicable to a camp or in violation of the conditions stated in the permit. A new permit shall not be issued until the department is satisfied that the camp will be operated in compliance with the law and regulations.

Source: Laws 1959, c. 328, § 4, p. 1194; Laws 1996, LB 1044, § 643; Laws 2007, LB296, § 558.
Operative date July 1, 2007.

ARTICLE 33

FLUORIDATION

Section.

71-3305. Political subdivision; fluoride added to water supply; exception.

71-3306. Other entity; fluoride added to water supply; rules and regulations.

71-3305 Political subdivision; fluoride added to water supply; exception. (1) Except as provided in subsection (2) of this section, any political subdivision as defined in section 13-702, that provides the water supply of any city or village for human consumption shall add fluoride to such water supply in the amount and manner prescribed by the rules and regulations of the Department of Health and Human Services.

(2) Fluoride shall not be added to the water supply of any city or village in which the voters have, after September 2, 1973, adopted an ordinance by initiative prohibiting the adding of fluoride to its water supply. The procedure for the adoption of any such ordinance shall be

that provided in sections 18-2501 to 18-2536. No such ordinance may be adopted in a city or village receiving, or which has contracted to receive, its water supply, or any part thereof, from another political subdivision, or public or private entity, which adds fluoride to its water supply in compliance with subsection (1) of this section, or section 71-3306, or which has available only purchased fluoridated water with which to supply such city or village.

Source: Laws 1973, LB 449, § 1; Laws 1975, LB 245, § 2; Laws 1982, LB 807, § 45; Laws 1996, LB 1044, § 644; Laws 2007, LB296, § 559.
Operative date July 1, 2007.

71-3306 Other entity; fluoride added to water supply; rules and regulations. Any public or private entity not included in section 71-3305 which provides a water supply for human consumption and which is not required to add fluoride to such water supply may add fluoride to such water supply in the amount and manner prescribed by the rules and regulations of the Department of Health and Human Services.

Source: Laws 1973, LB 449, § 2; Laws 1996, LB 1044, § 645; Laws 2007, LB296, § 560.
Operative date July 1, 2007.

ARTICLE 34

REDUCTION IN MORBIDITY AND MORTALITY

(a) GENERAL PROVISIONS

Section.

71-3401. Information, statements, and data; furnish without liability.

71-3402. Publication of material; purpose; identity of person confidential.

(b) CHILD DEATHS

71-3406. State Child Death Review Team; core members; terms; chairperson; not considered public body; meetings; expenses.

71-3410. Provision of information and records; subpoenas.

(a) GENERAL PROVISIONS

71-3401 Information, statements, and data; furnish without liability. Any person, hospital, sanitarium, nursing home, rest home, or other organization may provide information, interviews, reports, statements, memoranda, or other data relating to the condition and treatment of any person to the Department of Health and Human Services, the Nebraska Medical Association or any of its allied medical societies, the Nebraska Association of Hospitals and Health Systems, any in-hospital staff committee, or any joint venture of such entities to be used in the course of any study for the purpose of reducing morbidity or mortality, and no liability of any kind or character for damages or other relief shall arise or be enforced against any person or organization by reason of having provided such information or material, by reason of having released or published the findings and conclusions of such

groups to advance medical research and medical education, or by reason of having released or published generally a summary of such studies.

Source: Laws 1961, c. 347, § 1, p. 1105; Laws 1992, LB 860, § 4; Laws 1994, LB 1223, § 44; Laws 1996, LB 1044, § 646; Laws 2007, LB296, § 561.
Operative date July 1, 2007.

71-3402 Publication of material; purpose; identity of person confidential. The Department of Health and Human Services, the Nebraska Medical Association or any of its allied medical societies, the Nebraska Association of Hospitals and Health Systems, any in-hospital staff committee, or any joint venture of such entities shall use or publish the material specified in section 71-3401 only for the purpose of advancing medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of such studies may be released by any such group for general publication. In all events the identity of any person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances.

Source: Laws 1961, c. 347, § 2, p. 1106; Laws 1992, LB 860, § 5; Laws 1994, LB 1223, § 45; Laws 1996, LB 1044, § 647; Laws 2007, LB296, § 562.
Operative date July 1, 2007.

(b) CHILD DEATHS

71-3406 State Child Death Review Team; core members; terms; chairperson; not considered public body; meetings; expenses. (1) The chief executive officer of the Department of Health and Human Services shall appoint a minimum of eight and a maximum of twelve members to the State Child Death Review Team. The core members shall be (a) a physician employed by the department, who shall be a permanent member and shall serve as the chairperson of the team, (b) a senior staff member with child protective services of the department, (c) a forensic pathologist, (d) a law enforcement representative, and (e) an attorney. The remaining members appointed may be, but shall not be limited to, the following: A county attorney; a Federal Bureau of Investigation agent responsible for investigations on Native American reservations; a social worker; and members of organizations which represent hospitals or physicians.

(2) Members shall serve four-year terms with the exception of the chairperson. In the absence of the chairperson, the chief executive officer may appoint another member of the core team to serve as chairperson.

(3) The team shall not be considered a public body for purposes of the Open Meetings Act. The team shall meet a minimum of four times a year. Members of the team shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1993, LB 431, § 3; Laws 1996, LB 1044, § 648; Laws 1997, LB 307, § 187; Laws 1998, LB 1073, § 125; Laws 2003, LB 467, § 1; Laws 2004, LB 821, § 17; Laws 2007, LB296, § 563.
Operative date July 1, 2007.

Cross Reference

Open Meetings Act, see section 84-1407.

71-3410 Provision of information and records; subpoenas. Upon request the team shall be immediately provided:

(1) Information and records maintained by a provider of medical, dental, prenatal, and mental health care, including medical reports, autopsy reports, and emergency and paramedic records; and

(2) All information and records maintained by any state, county, or local government agency, including, but not limited to, birth and death certificates, law enforcement investigative data and reports, coroner investigative data and reports, parole and probation information and records, and information and records of any social services agency that provided services to the child or the child's family.

The Department of Health and Human Services shall have the authority to issue subpoenas to compel production of any of the records and information specified in subdivisions (1) and (2) of this section, except records and information on any child death under active investigation by a law enforcement agency or which is at the time the subject of a criminal prosecution, and shall provide such records and information to the team.

Source: Laws 1993, LB 431, § 7; Laws 1996, LB 1044, § 650; Laws 1998, LB 1073, § 126; Laws 2007, LB296, § 564.
Operative date July 1, 2007.

ARTICLE 35

RADIATION CONTROL AND RADIOACTIVE WASTE

(a) RADIATION CONTROL ACT

Section.

- 71-3501. Public policy.
- 71-3502. Purpose of act; programs provided.
- 71-3502.01. Radon mitigation program; authorized.
- 71-3503. Terms, defined.
- 71-3504. Radiation control activities; Department of Health and Human Services; powers and duties.
- 71-3505. Department; powers and duties.
- 71-3507. Licenses or registration; rules and regulations; exemptions; reciprocity; department; right of entry; surveys and inspections.
- 71-3508.03. Fees; costs; use; exemptions; failure to pay; effect.
- 71-3508.04. Licensee; surety; long-term site surveillance and care; funds; disposition; powers and duties.
- 71-3512. Transferred to section 38-1914.
- 71-3513. Rules and regulations; licensure; department; powers; duties; appeal.
- 71-3515. Radiation; acts; registration or license required.
- 71-3515.01. Transferred to section 38-1915.
- 71-3515.02. Transferred to section 38-1918.
- 71-3516.01. Impounded source of radiation; disposition; procedure; expenses.

- 71-3517. Violations; civil and criminal penalties; appeal.
- 71-3518.01. Existing rules, regulations, licenses, forms of approval, suits, other proceedings; how treated.
- 71-3519. Act, how cited.

(c) HIGH-LEVEL RADIOACTIVE WASTE AND TRANSURANIC WASTE

- 71-3524. Terms, defined.
- 71-3526. Radiation Transportation Emergency Response Cash Fund; created; use; investment; changes in fees; when.

(d) RADIOLOGICAL INSTRUMENTS

- 71-3532. Nebraska Emergency Management Agency Cash Fund; created; use; investment.

(a) RADIATION CONTROL ACT

71-3501 Public policy. It is the policy of the State of Nebraska in furtherance of its responsibility to protect occupational and public health and safety and the environment:

(1) To institute and maintain a regulatory program for sources of radiation so as to provide for:

(a) Compatibility and equivalency with the standards and regulatory programs of the federal government;

(b) A single effective system of regulation within the state; and

(c) A system consonant insofar as possible with those of other states;

(2) To institute and maintain a program to permit development and utilization of sources of radiation for peaceful purposes consistent with the protection of occupational and public health and safety and the environment;

(3) To provide for the availability of capacity either within or outside the state for the management of low-level radioactive waste generated within the state, except for waste generated as a result of defense or federal research and development activities, and to recognize that such radioactive waste can be most safely and efficiently managed on a regional basis; and

(4) To maximize the protection practicable for the citizens of Nebraska from radon or its decay products by establishing requirements for (a) appropriate qualifications for persons providing measurement and mitigation services of radon or its decay products and (b) radon mitigation system installations.

Source: Laws 1963, c. 406, § 1, p. 1296; Laws 1975, LB 157, § 1; Laws 1984, LB 716, § 1; Laws 1987, LB 390, § 2; Laws 1993, LB 536, § 82; Laws 1995, LB 406, § 40; Laws 2007, LB463, § 1207. Operative date December 1, 2008.

71-3502 Purpose of act; programs provided. It is the purpose of the Radiation Control Act to effectuate the policies set forth in section 71-3501 by providing for:

(1) A program of effective regulation of sources of radiation for the protection of occupational and public health and safety and the environment;

(2) A program to promote an orderly regulatory pattern within the state, among the states, and between the federal government and the state and facilitate intergovernmental cooperation

with respect to use and regulation of sources of radiation to the end that duplication of regulation may be minimized;

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to sources of radiation; and

(4) A program to permit maximum utilization of sources of radiation consistent with the health and safety of the public.

Source: Laws 1963, c. 406, § 2, p. 1296; Laws 1975, LB 157, § 2; Laws 1984, LB 716, § 2; Laws 1987, LB 390, § 3; Laws 1995, LB 406, § 41; Laws 2007, LB463, § 1208.
Operative date December 1, 2008.

71-3502.01 Radon mitigation program; authorized. The department may establish an alternative maximum contaminant level for radon in drinking water by establishing a multimedia radon mitigation program as provided under federal law which may include public education, testing, training, technical assistance, remediation grants, and loan or incentive programs. The purpose of the radon mitigation program shall be to achieve health risk reduction benefits equal to or greater than the health risk reduction benefits that would be achieved if each public water system in the state complied with the maximum contaminant level of three hundred picocuries per liter.

Source: Laws 2001, LB 668, § 1; Laws 2007, LB296, § 565.
Operative date July 1, 2007.

71-3503 Terms, defined. For purposes of the Radiation Control Act, unless the context otherwise requires:

(1) Radiation means ionizing radiation and nonionizing radiation as follows:

(a) Ionizing radiation means gamma rays, X-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other atomic or nuclear particles or rays but does not include sound or radio waves or visible, infrared, or ultraviolet light; and

(b) Nonionizing radiation means (i) any electromagnetic radiation which can be generated during the operations of electronic products to such energy density levels as to present a biological hazard to occupational and public health and safety and the environment, other than ionizing electromagnetic radiation, and (ii) any sonic, ultrasonic, or infrasonic waves which are emitted from an electronic product as a result of the operation of an electronic circuit in such product and to such energy density levels as to present a biological hazard to occupational and public health and safety and the environment;

(2) Radioactive material means any material, whether solid, liquid, or gas, which emits ionizing radiation spontaneously. Radioactive material includes, but is not limited to, accelerator-produced material, byproduct material, naturally occurring material, source material, and special nuclear material;

(3) Radiation-generating equipment means any manufactured product or device, component part of such a product or device, or machine or system which during operation can generate or emit radiation except devices which emit radiation only from radioactive material;

(4) Sources of radiation means any radioactive material, any radiation-generating equipment, or any device or equipment emitting or capable of emitting radiation or radioactive material;

(5) Undesirable radiation means radiation in such quantity and under such circumstances as determined from time to time by rules and regulations adopted and promulgated by the department;

(6) Person means any individual, corporation, partnership, limited liability company, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing;

(7) Registration means registration with the department pursuant to the Radiation Control Act;

(8) Department means the Department of Health and Human Services;

(9) Administrator means the administrator of radiation control designated pursuant to section 71-3504;

(10) Electronic product means any manufactured product, device, assembly, or assemblies of such products or devices which, during operation in an electronic circuit, can generate or emit a physical field of radiation;

(11) License means:

(a) A general license issued pursuant to rules and regulations adopted and promulgated by the department without the filing of an application with the department or the issuance of licensing documents to particular persons to transfer, acquire, own, possess, or use quantities of or devices or equipment utilizing radioactive materials;

(b) A specific license, issued to a named person upon application filed with the department pursuant to the Radiation Control Act and rules and regulations adopted and promulgated pursuant to the act, to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment utilizing radioactive materials; or

(c) A license issued to a radon measurement specialist, radon measurement technician, radon mitigation specialist, radon mitigation technician, radon measurement business, or radon mitigation business;

(12) Byproduct material means:

(a) Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by such solution extraction operations do not constitute byproduct material;

(13) Source material means:

(a) Uranium or thorium or any combination thereof in any physical or chemical form; or

(b) Ores which contain by weight one-twentieth of one percent or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material;

(14) Special nuclear material means:

(a) Plutonium, uranium 233, or uranium enriched in the isotope 233 or in the isotope 235 and any other material that the United States Nuclear Regulatory Commission pursuant to the provisions of section 51 of the federal Atomic Energy Act of 1954, as amended, determines to be special nuclear material but does not include source material; or

(b) Any material artificially enriched by any material listed in subdivision (14)(a) of this section but does not include source material;

(15) Users of sources of radiation means:

(a) Physicians using radioactive material or radiation-generating equipment for human use;

(b) Natural persons using radioactive material or radiation-generating equipment for education, research, or development purposes;

(c) Natural persons using radioactive material or radiation-generating equipment for manufacture or distribution purposes;

(d) Natural persons using radioactive material or radiation-generating equipment for industrial purposes; and

(e) Natural persons using radioactive material or radiation-generating equipment for any other similar purpose;

(16) Civil penalty means any monetary penalty levied on a licensee or registrant because of violations of statutes, rules, regulations, licenses, or registration certificates but does not include criminal penalties;

(17) Closure means all activities performed at a waste handling, processing, management, or disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custodial care, surveillance, and monitoring are necessary at the site following termination of licensed operation;

(18) Decommissioning means final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for postoperational care;

(19) Disposal means the permanent isolation of low-level radioactive waste pursuant to the Radiation Control Act and rules and regulations adopted and promulgated pursuant to such act;

(20) Generate means to produce low-level radioactive waste when used in relation to low-level radioactive waste;

(21) High-level radioactive waste means:

(a) Irradiated reactor fuel;

(b) Liquid wastes resulting from the operation of the first cycle solvent extraction system or equivalent and the concentrated wastes from subsequent extraction cycles or the equivalent in a facility for reprocessing irradiated reactor fuel; and

(c) Solids into which such liquid wastes have been converted;

(22) Low-level radioactive waste means radioactive waste not defined as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in subdivision (12)(b) of this section;

(23) Management of low-level radioactive waste means the handling, processing, storage, reduction in volume, disposal, or isolation of such waste from the biosphere in any manner;

(24) Source material mill tailings or mill tailings means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from underground solution extraction processes, but not including underground ore bodies depleted by such solution extraction processes;

(25) Source material milling means any processing of ore, including underground solution extraction of unmined ore, primarily for the purpose of extracting or concentrating uranium or thorium therefrom and which results in the production of source material and source material mill tailings;

(26) Spent nuclear fuel means irradiated nuclear fuel that has undergone at least one year of decay since being used as a source of energy in a power reactor. Spent nuclear fuel includes the special nuclear material, byproduct material, source material, and other radioactive material associated with fuel assemblies;

(27) Transuranic waste means radioactive waste material containing alpha-emitting radioactive elements, with radioactive half-lives greater than five years, having an atomic number greater than 92 in concentrations in excess of one hundred nanocuries per gram;

(28) Licensed practitioner means a person licensed to practice medicine, dentistry, podiatry, chiropractic, osteopathic medicine and surgery, or as an osteopathic physician;

(29) X-ray system means an assemblage of components for the controlled production of X-rays, including, but not limited to, an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system;

(30) Licensed facility operator means any person or entity who has obtained a license under the Low-Level Radioactive Waste Disposal Act to operate a facility, including any person or entity to whom an assignment of a license is approved by the Department of Environmental Quality; and

(31) Deliberate misconduct means an intentional act or omission by a person that (a) would intentionally cause a licensee, registrant, or applicant for a license or registration to be in violation of any rule, regulation, or order of or any term, condition, or limitation of any license or registration issued by the department under the Radiation Control Act or (b) constitutes an intentional violation of a requirement, procedure, instruction, contract, purchase order, or policy under the Radiation Control Act by a licensee, a registrant, an applicant for a license or registration, or a contractor or subcontractor of a licensee, registrant, or applicant for a license or registration.

Source: Laws 1963, c. 406, § 3, p. 1297; Laws 1975, LB 157, § 3; Laws 1978, LB 814, § 3; Laws 1984, LB 716, § 3; Laws 1987, LB 390, § 4; Laws 1989, LB 342, § 32; Laws 1990, LB 1064, § 17; Laws 1993, LB 121, § 434; Laws 1993, LB 536, § 83; Laws 1995, LB 406, § 42; Laws 1996, LB 1044, § 651; Laws 1996, LB 1201, § 1; Laws 2002, LB 93, § 12; Laws 2002, LB 1021, § 71; Laws 2005, LB 301, § 42; Laws 2006, LB 994, § 103; Laws 2007, LB296 § 566; Laws 2007, LB463, § 1209.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 566, with LB 463, section 1209, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Low-Level Radioactive Waste Disposal Act, see section 81-1578.

71-3504 Radiation control activities; Department of Health and Human Services; powers and duties. (1) The Department of Health and Human Services shall coordinate radiation control activities and may designate an administrator of radiation control. The administrator shall:

- (a) Advise the Governor and agencies of the state on matters relating to radiation; and
- (b) Coordinate regulatory activities of the state relating to radiation, including cooperation with other states and the federal government.

(2) The administrator shall:

(a) Review before and after the holding of any public hearing required under the Administrative Procedure Act, prior to promulgation, the proposed rules and regulations of all agencies of the state relating to use and control of radiation to assure that such rules and regulations are consistent with rules and regulations of other agencies of the state;

(b) When he or she determines that proposed rules or regulations or parts thereof are inconsistent with rules and regulations of other agencies of the state, make an effort to resolve such inconsistencies. Upon notification that such inconsistencies have not been resolved, the Governor may, after consultation with the department, find that the proposed rules and regulations or parts thereof are inconsistent with rules and regulations of other agencies of the state or the federal government and may issue an order to that effect, in which event the proposed rules and regulations or parts thereof shall not become effective. The Governor may, in the alternative, upon a similar determination, direct the appropriate agency or agencies to amend or repeal existing rules and regulations to achieve consistency with the proposed rules and regulations;

(c) Advise, consult, and cooperate with other agencies of the state, the federal government, other states, interstate agencies, political subdivisions, and other organizations concerned with control of sources of radiation; and

(d) Collect and disseminate information relating to the control of sources of radiation and maintain (i) a file of all registrants, license applications, issuances, denials, amendments, transfers, renewals, modifications, inspections, recommendations pertaining to radiation, suspensions, and revocations, (ii) a file of registrants possessing or using sources of radiation requiring registration under the Radiation Control Act and any administrative or judicial

action pertaining to such registration, and (iii) a file of all rules and regulations relating to the regulation of sources of radiation, pending or promulgated, and proceedings on such rules and regulations thereon.

(3) The several agencies of the state and political subdivisions shall keep the administrator fully and currently informed as to their activities relating to development of new uses and regulation of sources of radiation.

Source: Laws 1963, c. 406, § 4, p. 1298; Laws 1975, LB 157, § 4; Laws 1987, LB 390, § 5; Laws 1996, LB 1044, § 652; Laws 2002, LB 93, § 13; Laws 2007, LB296, § 567.
Operative date July 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

71-3505 Department; powers and duties. Matters relative to radiation as they relate to occupational and public health and safety and the environment shall be a responsibility of the department. The department shall:

(1) Develop comprehensive policies and programs for the evaluation and determination of undesirable radiation associated with the production, use, storage, or disposal of radiation sources and formulate, adopt, promulgate, and repeal rules and regulations which may provide (a) for registration or licensure under section 71-3507 or 71-3509 and (b) for registration or licensure of (i) any other source of radiation, (ii) persons providing services for collection, detection, measurement, or monitoring of sources of radiation, including, but not limited to, radon and its decay products, (iii) persons providing services to reduce the effects of sources of radiation, and (iv) persons practicing industrial radiography, as specified by rule or regulation so as to reasonably protect occupational and public health and safety and the environment in a manner compatible with regulatory programs of the federal government. The department for identical purposes may also adopt and promulgate rules and regulations for the issuance of licenses, either general or specific, to persons for the purpose of using, manufacturing, producing, transporting, transferring, receiving, acquiring, owning, or possessing any radioactive material. Such rules and regulations may prohibit the use of radiation for uses found by the department to be detrimental to occupational and public health or safety or the environment and shall carry out the purposes and policies set out in sections 71-3501 and 71-3502. Such rules and regulations shall not prohibit or limit the kind or amount of radiation purposely prescribed for or administered to a patient by doctors of medicine and surgery, dentistry, osteopathic medicine, chiropractic, podiatry, and veterinary medicine, while engaged in the lawful practice of such profession, or administered by other professional personnel, such as allied health personnel, medical radiographers, limited radiographers, nurses, and laboratory workers, acting under the supervision of a licensed practitioner. Violation of rules and regulations adopted and promulgated by the department pursuant to the Radiation Control Act shall be due cause for the suspension, revocation, or limitation of a license issued by the department. Any licensee may request a hearing before the department on the issue of such suspension, revocation, or limitation. Procedures for notice and opportunity for a hearing before the department shall be pursuant to the Administrative

Procedure Act. The decision of the department may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act;

(2) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(3) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to the control of sources of radiation;

(4) Collect and disseminate health education information relating to radiation protection;

(5) Make its facilities available so that any person or any agency may request the department to review and comment on plans and specifications of installations submitted by the person or agency with respect to matters of protection and safety for the control of undesirable radiation;

(6) Be empowered to inspect radiation sources and their shieldings and surroundings for the determination of any possible undesirable radiation or violations of rules and regulations adopted and promulgated by the department and provide the owner, user, or operator with a report of any known or suspected deficiencies; and

(7) Collect a fee for emergency response or environmental surveillance, or both, offsite from each nuclear power plant equal to the cost of completing the emergency response or environmental surveillance and any associated report. In no event shall the fee for any nuclear power plant exceed the lesser of the actual costs of such activities or fifty-three thousand dollars per annum. Commencing July 1, 1997, the accounting division of the Department of Administrative Services shall recommend an inflationary adjustment equivalent which shall be based upon the Consumer Price Index for All Urban Consumers of the United States Department of Labor, Bureau of Labor Statistics, and shall not exceed five percent per annum. Such adjustment shall be applied to the annual fee for nuclear power plants. The fee collected shall be credited to the Health and Human Services Cash Fund. This fee shall be used solely for the purpose of defraying the direct costs of the emergency response and environmental surveillance at Cooper Nuclear Station and Fort Calhoun Station conducted by the department. The department may charge additional fees when mutually agreed upon for services, training, or equipment that are a part of or in addition to matters in this section.

Source: Laws 1963, c. 406, § 5, p. 1299; Laws 1969, c. 577, § 1, p. 2324; Laws 1975, LB 157, § 5; Laws 1978, LB 814, § 4; Laws 1987, LB 390, § 6; Laws 1988, LB 352, § 131; Laws 1989, LB 342, § 33; Laws 1990, LB 1064, § 18; Laws 1995, LB 406, § 43; Laws 1996, LB 1044, § 653; Laws 1997, LB 658, § 13; Laws 2000, LB 1115, § 72; Laws 2002, LB 93, § 14; Laws 2007, LB296, § 568; Laws 2007, LB463, § 1210.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 568, with LB 463, section 1210, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

71-3507 Licenses or registration; rules and regulations; exemptions; reciprocity; department; right of entry; surveys and inspections. (1) The department shall adopt and promulgate rules and regulations for the issuance, amendment, suspension, and revocation of general and specific licenses. Such licenses shall be for byproduct material, source material, special nuclear material, and radioactive material not under the authority of the federal Nuclear Regulatory Commission and for devices or equipment utilizing such materials. The rules and regulations shall provide:

(a) For written applications for a specific license which include the technical, financial, and other qualifications determined by the department to be reasonable and necessary to protect occupational and public health and safety and the environment;

(b) For additional written statements and inspections, as required by the department, at any time after filing an application for a specific license and before the expiration of the license to determine whether the license should be issued, amended, suspended, or revoked;

(c) That all applications and statements be signed by the applicant or licensee;

(d) The form, terms, and conditions of general and specific licenses;

(e) That no license or right to possess or utilize sources of radiation granted by a license shall be assigned or in any manner disposed of without the written consent of the department; and

(f) That the terms and conditions of all licenses are subject to amendment by rules, regulations, or orders issued by the department.

(2) The department may require registration or licensing of radioactive material not enumerated in subsection (1) of this section in order to maintain compatibility and equivalency with the standards and regulatory programs of the federal government or to protect the occupational and public health and safety and the environment.

(3)(a) The department shall require licensure of persons providing measurement and mitigation services of radon or its decay products in order to protect the occupational and public health and safety and the environment.

(b) The department shall adopt and promulgate rules and regulations establishing education, experience, training, examination, and continuing competency requirements for radon measurement specialists, radon measurement technicians, radon mitigation specialists, and radon mitigation technicians. Application for such licenses shall be made as provided in the Uniform Credentialing Act. Such persons shall be credentialed in the same manner as an individual under subsection (1) of section 38-121 and shall be subject to disciplinary action pursuant to section 71-3517. Continuing competency requirements may include, but not be limited to, one or more of the continuing competency activities listed in section 38-145.

(c) The department shall adopt and promulgate rules and regulations establishing staffing, proficiency, quality control, reporting, worker health and safety, equipment, and record-keeping requirements for radon measurement businesses and radon mitigation businesses and mitigation system installation requirements for radon mitigation businesses.

(4) The department may exempt certain sources of radiation or kinds of uses or users from licensing or registration requirements established under the Radiation Control Act when the

department finds that the exemption will not constitute a significant risk to occupational and public health and safety and the environment.

(5) The department may provide by rule and regulation for the recognition of other state or federal licenses compatible and equivalent with the standards established by the department for Nebraska licensees.

(6) The department may accept accreditation for an industrial radiographer by a recognized independent accreditation body, a public agency, or the federal Nuclear Regulatory Commission, which has standards that are at least as stringent as those of the State of Nebraska, as evidence that the industrial radiographer complies with the rules and regulations adopted and promulgated pursuant to the act. The department may adopt and promulgate rules and regulations which list accreditation bodies, public agencies, and federal programs that meet this standard.

(7) The department may enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with the act and rules and regulations adopted and promulgated pursuant to the act, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

(8) The department shall cause to be registered with the department such sources of radiation as the department determines to be reasonably necessary to protect occupational and public health and safety and the environment as follows:

(a) The department shall, by public notice, establish a date on or before which date such sources of radiation shall be registered with the department, and the department shall provide appropriate forms for such registration. Each application for registration shall be in writing and shall state such information as the department by rules or regulations may determine to be necessary and reasonable to protect occupational and public health and safety and the environment;

(b) Registration of sources of radiation shall be an initial registration with appropriate notification to the department in the case of alteration of equipment, acquisition of new sources of radiation, or the transfer, loss, or destruction of sources of radiation and shall include the registration of persons installing or servicing sources of radiation;

(c) Failure to register or reregister sources of radiation in accordance with rules and regulations adopted and promulgated by the department shall be subject to a fine of not less than fifty dollars nor more than two hundred dollars; and

(d) The department may provide by rule and regulation for reregistration of sources of radiation.

(9) The results of any surveys or inspections of sources of radiation conducted by the department shall be public records subject to sections 84-712 to 84-712.09. In addition, the following information shall be deemed confidential:

(a) The names of individuals in dosimetry reports;

(b) Emergency response procedures which would present a clear threat to security or disclose names of individuals; and

(c) Any other information that is likely to present a clear threat to the security of radioactive material. The department shall make such reports of results of surveys or inspections available to the owner or operator of the source of radiation together with any recommendations of the department regarding deficiencies noted.

(10) The department shall have the right to survey or inspect again any source of radiation previously surveyed without limitation of the number of surveys or inspections conducted on a given source of radiation.

(11) The department may enter into contracts with persons or corporations to perform the inspection of X-ray radiation-generating equipment or devices which emit radiation from radioactive materials and to aid the department in the administration of the act.

Source: Laws 1963, c. 406, § 7, p. 1301; Laws 1975, LB 157, § 7; Laws 1978, LB 814, § 5; Laws 1987, LB 390, § 7; Laws 1990, LB 1064, § 19; Laws 1993, LB 536, § 84; Laws 1995, LB 406, § 44; Laws 1999, LB 800, § 11; Laws 2000, LB 1115, § 73; Laws 2002, LB 1021, § 72; Laws 2007, LB463, § 1211.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

71-3508.03 Fees; costs; use; exemptions; failure to pay; effect. (1) The department shall establish by rule and regulation annual fees for the radioactive materials licenses, for inspections of radioactive materials, for the registration and inspection of radiation-generating equipment and other sources of radiation, and for radon measurement and mitigation business licenses and inspections of radon mitigation systems installations under the Radiation Control Act. The annual fee for registration and inspection of X-ray radiation generating equipment used to diagnose conditions in humans or animals shall not exceed seventy dollars per X-ray machine. The department shall also establish by rule and regulation additional fees for environmental surveillance activities performed by the department to assess the radiological impact of activities conducted by licensees and registrants. Such activities shall not duplicate surveillance programs approved by the federal Nuclear Regulatory Commission and conducted by entities licensed by such commission. No fee shall exceed the actual cost to the department for administering the act. The fees collected shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund and shall be used solely for the purpose of defraying the direct and indirect costs of administering the act. The department shall collect such fees.

(2) The department may, upon application by an interested person or on its own initiative, grant such exemptions from the requirements of this section as it determines are in the public interest. Applications for exemption under this subsection may include, but shall not be limited to, the use of licensed materials for educational or noncommercial displays or scientific collections.

(3) When a registrant or licensee fails to pay the applicable fee, the department may suspend or revoke the registration or license or may issue an appropriate order.

(4) The department shall establish and collect fees for licenses for individuals engaged in radon detection, measurement, and mitigation as provided in sections 38-151 to 38-157.

Source: Laws 1987, LB 390, § 11; Laws 1990, LB 1064, § 20; Laws 1993, LB 536, § 85; Laws 1996, LB 1044, § 654; Laws 2002, LB 1021, § 73; Laws 2003, LB 242, § 114; Laws 2007, LB296 § 569; Laws 2007, LB463, § 1212.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 569, with LB 463, section 1212, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-3508.04 Licensee; surety; long-term site surveillance and care; funds; disposition; powers and duties. (1) For licensed activities involving source material milling, source material mill tailings, and management of low-level radioactive waste, the department shall, and for other classes of licensed activities the department may, adopt and promulgate rules and regulations which establish standards and procedures to ensure that the licensee will provide an adequate surety or other financial arrangement to permit the completion of all requirements established by the department for the licensure, regulation, decontamination, closure, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with such licensed activity in case the licensee should default for any reason in performing such requirements. All sureties required which are forfeited shall be paid to the department and remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money in such fund remitted pursuant to this subsection shall be expended by the department as necessary to complete the closure and reclamation requirements and shall not be used for normal operating expenses of the department.

(2) For licensed activities involving the disposal of source material mill tailings and management of low-level radioactive waste, the department shall, and for other classes of licensed activities when radioactive material which will require surveillance or care is likely to remain at the site after the licensed activities cease the department may, adopt and promulgate rules and regulations which establish standards and procedures to ensure that the licensee, before termination of the license, will make available such funding arrangements as may be necessary to provide for long-term site surveillance and care. All such funds collected from licensees shall be paid to the department and remitted to the State Treasurer for credit to the fund. All funds accrued as interest on money credited to the fund pursuant to this subsection may be expended by the department for the continuing long-term surveillance, maintenance, and other care of facilities from which such funds are collected as necessary for protection of the occupational and public health and safety and the environment. If title to and custody of any radioactive material and its disposal site are transferred to the United States upon

termination of any license for which funds have been collected for such long-term care, the collected funds and interest accrued thereon shall be transferred to the United States.

(3) The sureties or other financial arrangements and funds required by this section shall be established in amounts sufficient to ensure compliance with standards, if any, established by the department pertaining to licensure, regulation, closure, decommissioning, reclamation, and long-term site surveillance and care of such facilities and sites.

(4) To provide for the proper care and surveillance of sites subject to subsection (2) of this section which are not subject to section 71-3508.01 or 71-3508.02, the state may acquire by gift or transfer from another governmental agency or private person any land and appurtenances necessary to fulfill the purposes of this section. Any such gift or transfer shall be subject to approval and acceptance by the Legislature.

(5) The department may by contract, agreement, lease, or license with any person, including another state agency, provide for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site subject to this section as needed to carry out the purposes of this section.

(6) If a person licensed by any governmental agency other than the department desires to transfer a site to the state for the purpose of administering or providing long-term care, a lump-sum deposit shall be made to the department and remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. The amount of such deposit shall be determined by the department taking into account the factors stated in subsections (1) and (2) of this section.

Source: Laws 1987, LB 390, § 12; Laws 1991, LB 703, § 37; Laws 1996, LB 1044, § 655; Laws 2007, LB296, § 570.
Operative date July 1, 2007.

71-3512 Transferred to section 38-1914.

71-3513 Rules and regulations; licensure; department; powers; duties; appeal. (1) In any proceeding for the issuance or modification of rules or regulations relating to control of sources of radiation, the department shall provide an opportunity for public participation through written comments and a public hearing.

(2) In any proceeding for the denial of an application for a license or for the amendment, suspension, or revocation of a license, the department shall provide the applicant or licensee an opportunity for a hearing on the record.

(3) In any proceeding for licensing ores processed primarily for their source material content and management of byproduct material and source material mill tailings, or for licensing management of low-level radioactive waste, the department shall provide:

(a) An opportunity, after public notice, for written comments and a public hearing with a transcript;

(b) An opportunity for cross-examination; and

(c) A written determination of the action to be taken which is based upon findings included in the determination and upon evidence presented during the public comment period.

(4) In any proceeding for licensing ores processed primarily for their source material content and disposal of byproduct material and source material mill tailings, or for licensing management of low-level radioactive waste, the department shall prepare, for each licensed activity which has a significant impact on the occupational or public health and safety or the environment, a written analysis of the impact of such licensed activity. The analysis shall be available to the public before the commencement of the hearing and shall include:

- (a) An assessment of the radiological and nonradiological impacts to the public health;
- (b) An assessment of any impact on any waterway and ground water;
- (c) Consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted; and
- (d) Consideration of the long-term impacts, including decommissioning, decontamination, and reclamation of facilities and sites associated with the licensed activities and management of any radioactive materials which will remain on the site after such decommissioning, decontamination, and reclamation.

(5) The department shall prohibit any major construction with respect to any activity for which an environmental impact analysis is required by this section prior to completion of such analysis.

(6) Whenever the department finds that an emergency exists with respect to radiation requiring immediate action to protect occupational or public health and safety or the environment, the department may, without notice, hearing, or submission to the administrator, issue a regulation or order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Notwithstanding any provisions of the Radiation Control Act, such regulation or order shall be effective immediately. Any person to whom such regulation or order is directed shall comply immediately, but on application to the department shall be afforded a hearing not less than fifteen days and not more than thirty days after filing of the application. On the basis of such hearing, the emergency regulation or order shall be continued, modified, or revoked within thirty days after such hearing, and the department shall mail the applicant a copy of its findings of fact and determination.

(7) Any final department action or order entered pursuant to subsection (1), (2), (3), or (6) of this section may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1963, c. 406, § 13, p. 1305; Laws 1975, LB 157, § 12; Laws 1987, LB 390, § 16; Laws 1988, LB 352, § 132; Laws 2007, LB296, § 571.
Operative date July 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

71-3515 Radiation; acts; registration or license required. It shall be unlawful for any person to use, manufacture, produce, distribute, sell, transport, transfer, install, repair, receive, acquire, own, or possess any source of radiation unless registered with or licensed

by the department as required by the Medical Radiography Practice Act or section 71-3505, 71-3507, or 71-3509.

Source: Laws 1963, c. 406, § 15, p. 1306; Laws 1975, LB 157, § 13; Laws 1978, LB 814, § 7; Laws 1984, LB 716, § 5; Laws 1987, LB 390, § 18; Laws 2007, LB463, § 1213.
Operative date December 1, 2008.

Cross Reference

Medical Radiography Practice Act, see section 38-1901.

71-3515.01 Transferred to section 38-1915.

71-3515.02 Transferred to section 38-1918.

71-3516.01 Impounded source of radiation; disposition; procedure; expenses. (1)

The department shall keep any source of radiation impounded under section 71-3516 for as long as it is needed as evidence for any hearing.

(2) Prior to the issuance of an order of disposition for an impounded source of radiation, the department shall notify in writing any person, known by the department to claim an interest in the source of radiation, that the department intends to dispose of the source of radiation. Notice shall be served by personal service, by certified or registered mail to the last-known address of the person, or by publication. Notice by publication shall only be made if personal service or service by mail cannot be effectuated.

(3) Within fifteen days after service of the notice under subsection (2) of this section, any person claiming an interest in the impounded source of radiation may request, in writing, a hearing before the department to determine possession of the source of radiation. The hearing shall be held in accordance with rules and regulations adopted and promulgated by the department. If the department determines that the person claiming an interest in the source of radiation has proven by a preponderance of the evidence that such person (a) had not used or intended to use the source of radiation in violation of the Radiation Control Act, (b) has an interest in the source of radiation acquired in good faith as an owner, a lien holder, or otherwise, and (c) has the authority under the act to possess such source of radiation, the department shall order that possession of the source of radiation be given to such person. If possession of the impounded source of radiation is not given to the person requesting the hearing, such person may appeal the decision of the department, and the appeal shall be in accordance with the Administrative Procedure Act. If possession of the impounded source of radiation is not given to the person so appealing, the department shall order such person to pay for the costs of the hearing, storage fees, and any other reasonable and necessary expenses related to the impounded source of radiation.

(4) If possession of the impounded source of radiation is not given to the person requesting the hearing under subsection (3) of this section, the department shall issue an order of disposition for the source of radiation and shall dispose of the source of radiation as directed in the order. Disposition methods are at the discretion of the department and may include, but are not limited to, (a) sale of the source of radiation to a person authorized to possess the

source of radiation under the act, (b) transfer to the manufacturer of the source of radiation, or (c) destruction of the source of radiation. The order of disposition shall be considered a transfer of title of the source of radiation.

(5) If expenses related to the impounded source of radiation are not paid under subsection (3) of this section, the department shall pay such expenses from:

- (a) Proceeds from the sale of the source of radiation, if sold; or
- (b) Available funds in the Health and Human Services Cash Fund.

Source: Laws 2006, LB 994, § 107; Laws 2007, LB296, § 572.
Operative date July 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

71-3517 Violations; civil and criminal penalties; appeal. (1) Any person who violates any of the provisions of the Radiation Control Act shall be guilty of a Class IV misdemeanor.

(2) In addition to the penalty provided in subsection (1) of this section, any person who violates any provision of the Radiation Control Act or any rule, regulation, or order issued pursuant to such act or any term, condition, or limitation of any license or registration certificate issued pursuant to such act shall be subject to:

- (a) License revocation, suspension, modification, condition, or limitation;
- (b) The imposition of a civil penalty; or
- (c) The terms of any appropriate order issued by the department.

(3) Whenever the department proposes to subject a person to the provisions of subsection (2) of this section, the department shall notify the person in writing (a) setting forth the date, facts, and nature of each act or omission with which the person is charged, (b) specifically identifying the particular provision or provisions of the section, rule, regulation, order, license, or registration certificate involved in the violation, and (c) of the sanction or order to be imposed. If a civil penalty is imposed, the notice shall include a statement that it can be collected by civil action. The notice shall be delivered to each alleged violator by personal service, by certified or registered mail to his or her last-known address, or by publication. Notice by publication shall only be made if personal service or service by mail cannot be effectuated. The sanction or order in the notice shall become final thirty days after the mailing of the notice unless the applicant, registrant, or licensee, within the thirty-day period, requests, in writing, a hearing before the department. If the notice is served by personal service or publication, the sanction or order shall become final thirty days after completion of such service unless the applicant, registrant, or licensee, within the thirty-day period, requests, in writing, a hearing before the department.

(4) Hearings held pursuant to subsection (3) of this section shall be held in accordance with rules and regulations adopted and promulgated by the department and shall provide for the alleged violator to present such evidence as may be proper. Witnesses may be subpoenaed by

either party and shall be allowed fees at a rate prescribed by the rules and regulations of the department. A full and complete record shall be kept of the proceedings.

(5) Following the hearing, the department shall determine whether the charges are true or not, and if true, the department may (a) issue a declaratory order finding the charges to be true, (b) revoke, suspend, modify, condition, or limit the license, (c) impose a civil penalty in an amount not to exceed ten thousand dollars for each violation, or (d) enter an appropriate order. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty and the amount of the penalty shall be based on the severity of the violation. A copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by either certified or registered mail to the alleged violator. The decision may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(6) Any civil penalty assessed and unpaid under subsection (5) of this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The department shall, within thirty days from receipt, remit any collected civil penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(7) In addition to the provisions of this section, radon measurement specialists, radon measurement technicians, radon mitigation specialists, and radon mitigation technicians shall be subject to the reporting, investigatory, and disciplinary provisions of sections 38-176 to 38-185, 38-1,106, 38-1,109 to 38-1,126, and 38-1,137 to 38-1,139. In addition to the grounds for disciplinary action found in the Uniform Credentialing Act, a license issued to a specialist or technician may be disciplined for any violation of the Radiation Control Act or the rules and regulations adopted and promulgated under the act.

Source: Laws 1963, c. 406, § 17, p. 1306; Laws 1977, LB 39, § 172; Laws 1987, LB 390, § 20; Laws 1988, LB 352, § 133; Laws 2002, LB 1021, § 77; Laws 2007, LB296, § 573; Laws 2007, LB463, § 1214.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 573, with LB 463, section 1214, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

Uniform Credentialing Act, see section 38-101.

71-3518.01 Existing rules, regulations, licenses, forms of approval, suits, other proceedings; how treated. (1) All rules and regulations adopted prior to December 1, 2008, under the Radiation Control Act shall continue to be effective to the extent not in conflict with the changes made by Laws 2007, LB 463.

(2) All licenses or other forms of approval issued prior to December 1, 2008, in accordance with the Radiation Control Act shall remain valid as issued for purposes of the changes made by Laws 2007, LB 463, unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to December 1, 2008, under the Radiation Control Act shall be subject to the provisions of the act as they existed prior to December 1, 2008.

Source: Laws 2007, LB463, § 1215.
Operative date December 1, 2008.

71-3519 Act, how cited. Sections 71-3501 to 71-3520 shall be known and may be cited as the Radiation Control Act.

Source: Laws 1963, c. 406, § 20, p. 1306; Laws 1987, LB 390, § 22; Laws 2001, LB 668, § 2; Laws 2002, LB 1021, § 78; Laws 2005, LB 453, § 1; Laws 2006, LB 994, § 108; Laws 2007, LB463, § 1216.
Operative date December 1, 2008.

(c) HIGH-LEVEL RADIOACTIVE WASTE AND TRANSURANIC WASTE

71-3524 Terms, defined. For purposes of sections 71-3523 to 71-3528:

- (1) Department means the Department of Health and Human Services;
- (2) High-level radioactive waste has the definition found in section 81-1589; and
- (3) Transuranic waste means radioactive waste material containing alpha-emitting radioactive elements, with radioactive half-lives greater than five years, having an atomic number greater than 92 in concentrations in excess of one hundred nanocuries per gram.

Source: Laws 2003, LB 165, § 2; Laws 2005, LB 301, § 43; Laws 2007, LB296, § 574.
Operative date July 1, 2007.

71-3526 Radiation Transportation Emergency Response Cash Fund; created; use; investment; changes in fees; when. The Radiation Transportation Emergency Response Cash Fund is created. The fund shall consist of fees credited pursuant to section 71-3525. The fund shall be used for the purposes stated in such section. The Director-State Engineer, the Superintendent of Law Enforcement and Public Safety, the chief executive officer of the department, the Adjutant General as director of the Nebraska Emergency Management Agency, and the executive director of the Public Service Commission, or their designees, shall meet at least annually to recommend changes in the fees charged and allocation of the fees collected among participating agencies based upon their respective costs in carrying out such section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2003, LB 165, § 4; Laws 2007, LB296, § 575.
Operative date July 1, 2007.

Cross Reference

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

(d) RADIOLOGICAL INSTRUMENTS

71-3532 Nebraska Emergency Management Agency Cash Fund; created; use; investment. The Nebraska Emergency Management Agency Cash Fund is created. The fund shall be administered by the director of the Nebraska Emergency Management Agency. The fund shall consist of all non-federal-fund revenue received by the Nebraska Emergency Management Agency. The fund shall only be used to pay for eligible costs of the Nebraska Emergency Management Agency. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2006, LB 787, § 4; Laws 2007, LB322, § 18.
 Operative date July 1, 2007.

Cross Reference

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

ARTICLE 36**TUBERCULOSIS DETECTION AND PREVENTION ACT**

Section.

71-3601. Terms, defined.

71-3610. Commitment; treatment; expenses; payment by state.

71-3601 Terms, defined. For purposes of the Tuberculosis Detection and Prevention Act:

(1) Communicable tuberculosis means tuberculosis manifested by a laboratory report of sputum or other body fluid or excretion found to contain tubercle bacilli or by chest X-ray findings interpreted as active tuberculosis by competent medical authority;

(2) Department means the Department of Health and Human Services;

(3) Facility means a structure in which suitable isolation for tuberculosis can be given and which is approved by the department for the detention of recalcitrant tuberculosis persons;

(4) Local health officer means (a) the health director of a local public health department as defined in section 71-1626 or (b) the medical advisor to the board of health of a county, city, or village;

(5) Recalcitrant tuberculous person means a person affected with tuberculosis in an active stage who by his or her conduct or mode of living endangers the health and well-being of other persons, by exposing them to tuberculosis, and who refuses to accept adequate treatment; and

(6) State health officer means the chief medical officer as described in section 81-3115.

Source: Laws 1963, c. 399, § 1, p. 1273; Laws 1982, LB 566, § 6; Laws 1996, LB 1044, § 657; Laws 2004, LB 1005, § 88; Laws 2007, LB296, § 576.
Operative date July 1, 2007.

71-3610 Commitment; treatment; expenses; payment by state. The expenses incurred in the care, maintenance, and treatment of patients committed under the Tuberculosis Detection and Prevention Act shall be paid from state funds appropriated to the department for the purpose of entering into agreements with qualified health care facilities so as to provide for the care, maintenance, and treatment of such patients and those other persons having communicable tuberculosis who voluntarily agree to and accept care and treatment.

Source: Laws 1963, c. 399, § 10, p. 1277; Laws 1972, LB 1492, § 2; Laws 1996, LB 1044, § 661; Laws 2004, LB 1005, § 93; Laws 2007, LB296, § 577.
Operative date July 1, 2007.

ARTICLE 37

ENVIRONMENTAL HEALTH SPECIALISTS

Section.

- 71-3702. Terms, defined.
- 71-3703. Transferred to section 38-1308.
- 71-3704. Transferred to section 38-1309.
- 71-3705. Repealed. Laws 2007, LB 463, § 1319.
- 71-3705.01. Repealed. Laws 2007, LB 463, § 1319.
- 71-3706. Board; members; appointment; qualifications; compensation; conflicts of interest.
- 71-3707. Repealed. Laws 2007, LB 463, § 1319.
- 71-3708. Repealed. Laws 2007, LB 463, § 1319.
- 71-3708.01. Repealed. Laws 2007, LB 463, § 1319.
- 71-3709. Repealed. Laws 2007, LB 463, § 1319.
- 71-3710. Transferred to section 38-1310.
- 71-3711. Repealed. Laws 2007, LB 463, § 1319.
- 71-3712. Repealed. Laws 2007, LB 463, § 1319.
- 71-3713. Transferred to section 38-1314.
- 71-3714. Transferred to section 38-1315.
- 71-3715. Repealed. Laws 2007, LB 463, § 1319.

71-3702 Terms, defined. For purposes of sections 71-3702 to 71-3715, unless the context otherwise requires:

- (1) Board means the Board of Registration for Environmental Health Specialists;
- (2) Environmental health specialist means a person who by education and experience in the physical, biological, and sanitary sciences is qualified to carry out educational, investigational, and technical duties in the field of environmental sanitation;

(3) Registered environmental health specialist means a person who has the educational requirements and has had experience in the field of environmental sanitation required by section 71-3703 and is registered in accordance with sections 71-3702 to 71-3715;

(4) Trainee means a person who is qualified by education but does not have at least one full year of experience in the field of environmental sanitation and is registered in accordance with sections 71-3702 to 71-3715;

(5) Certificate of registration means a document issued as evidence of registration and qualification to practice as an environmental health specialist or trainee under sections 71-3702 to 71-3715, bearing the designation Registered Environmental Health Specialist or Trainee, and showing the name of the person, date of issue, serial number, seal, and signatures of the members of the board authorized to grant such certificates; and

(6) Department means the Department of Health and Human Services.

Source: Laws 1963, c. 400, § 2, p. 1279; Laws 1989, LB 344, § 27; Laws 1991, LB 703, § 38; Laws 1996, LB 1044, § 666; Laws 2003, LB 242, § 116; Laws 2007, LB296, § 578; Laws 2007, LB463, § 523. Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 523, and transferred to section 38-1302 operative on December 1, 2008.

71-3703 Transferred to section 38-1308.

71-3704 Transferred to section 38-1309.

71-3705 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-3705.01 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-3706 Board; members; appointment; qualifications; compensation; conflicts of interest. The Board of Registration for Environmental Health Specialists shall consist of six members appointed by the State Board of Health. One member shall be a layperson who is at least the age of majority, who has been a resident of the state for at least five years immediately preceding appointment, and who is a representative of consumer viewpoints. Each of the other members shall have been engaged in environmental health for at least ten years, shall have had responsible charge of work for at least five years at the time of his or her appointment, and shall be a registered environmental health specialist. Each member of the Board of Registration for Environmental Health Specialists shall receive as compensation not more than twenty-five dollars per day for each day actually spent in traveling to and from and while attending sessions of the board and its committees, and each member shall also receive the necessary expenses incident to the performance of his or her duties as provided by sections 81-1174 to 81-1177 and subject to section 71-3708.01.

The department shall adopt and promulgate rules and regulations which establish definitions of conflicts of interest for members of the board and which establish procedures in the case such a conflict arises.

Source: Laws 1963, c. 400, § 6, p. 1281; Laws 1969, c. 578, § 1, p. 2326; Laws 1981, LB 204, § 127; Laws 1987, LB 473, § 49; Laws 1991, LB 703, § 43; Laws 1993, LB 375, § 4; Laws 1994, LB 1223, § 46; Laws 1996, LB 1044, § 667; Laws 2007, LB296, § 579; Laws 2007, LB463, § 528.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 528, and transferred to section 38-1307 operative on December 1, 2008.

71-3707 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-3708 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-3708.01 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-3709 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-3710 Transferred to section 38-1310.

71-3711 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-3712 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-3713 Transferred to section 38-1314.

71-3714 Transferred to section 38-1315.

71-3715 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

ARTICLE 43

SWIMMING POOLS

Section.

- 71-4302. Department of Health and Human Services; sanitary and safety requirements; adopt.
- 71-4303. Construction; permit; Department of Health and Human Services; issuance; when.
- 71-4304. Permit; application; requirements.
- 71-4305. Department of Health and Human Services; inspection; records; owners and operators; fees; exception.
- 71-4306. Inspection; violation of act; effect.

71-4302 Department of Health and Human Services; sanitary and safety requirements; adopt. The Department of Health and Human Services shall prepare, adopt, and have printed minimum sanitary and safety requirements in the form of regulations for the design, construction, equipment, and operation of swimming pools and bather preparation facilities. Such requirements shall include, but not be limited to, provisions for waiver or variance of design standards and the circumstances under which such waiver or variance may be granted.

Source: Laws 1969, c. 760, § 2, p. 2876; Laws 1996, LB 1044, § 669; Laws 2002, LB 1021, § 82; Laws 2007, LB296, § 580.
Operative date July 1, 2007.

71-4303 Construction; permit; Department of Health and Human Services; issuance; when. No swimming pool shall be constructed after January 1, 1970, unless and until plans, specifications, and any additional information relative to such pool as may be requested by the Department of Health and Human Services shall have been submitted to such department and after review by such department found to comply with the minimum sanitary and safety requirements provided in section 71-4302 and a permit for the construction of the pool issued by such department.

Source: Laws 1969, c. 760, § 3, p. 2876; Laws 1996, LB 1044, § 670; Laws 2007, LB296, § 581.
Operative date July 1, 2007.

71-4304 Permit; application; requirements. After January 1, 1970, swimming pools shall have equipment and shall be operated so as to comply with the minimum sanitary and safety requirements provided in section 71-4302. After such date no swimming pool shall operate until it has received a permit from the Department of Health and Human Services. Application for a permit to operate shall be submitted on forms provided by such department. Swimming pools constructed prior to January 1, 1970, which do not fully comply with the minimum sanitary and safety requirements as regards design and construction may be continued in use for such period as the department may authorize if the equipment and operation of such swimming pool comply with the minimum sanitary and safety requirements.

Source: Laws 1969, c. 760, § 4, p. 2876; Laws 1996, LB 1044, § 671; Laws 2007, LB296, § 582.
Operative date July 1, 2007.

71-4305 Department of Health and Human Services; inspection; records; owners and operators; fees; exception. (1) The Department of Health and Human Services shall make at least one inspection every year of each swimming pool to determine that such swimming pool complies with the minimum sanitary and safety requirements.

(2) The owner and operator of any swimming pool shall submit such operation and analytical records as may be requested at any time by the department to determine the sanitary and safety condition of the swimming pool.

(3) The department shall adopt and promulgate rules and regulations which classify swimming pools on the basis of criteria deemed appropriate by the department. The department shall charge engineering firms, swimming pool owners, and other appropriate

parties fees established by rules and regulations for the review of plans and specifications of a swimming pool, the issuance of a license or permit, the inspection of a swimming pool, and any other services rendered at a rate which defrays no more than the actual cost of the services provided. All fees shall be paid as a condition of annual renewal of licensure or of continuance of licensure. All fees collected under this subsection shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. The department shall not charge a municipal corporation an inspection fee for an inspection of a swimming pool owned by such municipal corporation.

(4) The department shall establish and collect fees for certificates of competency for swimming pool operators as provided in sections 38-151 to 38-157.

Source: Laws 1969, c. 760, § 5, p. 2876; Laws 1973, LB 583, § 12; Laws 1976, LB 440, § 1; Laws 1978, LB 812, § 2; Laws 1983, LB 617, § 23; Laws 1986, LB 1047, § 5; Laws 1996, LB 1044, § 672; Laws 2002, LB 1021, § 83; Laws 2003, LB 242, § 123; Laws 2007, LB296, § 583; Laws 2007, LB463, § 1217.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 583, with LB 463, section 1217, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-4306 Inspection; violation of act; effect. Whenever any duly authorized representative of the Department of Health and Human Services shall find that a swimming pool is being constructed, equipped, or operated in violation of any of the provisions of sections 71-4301 to 71-4307, the department may grant such time as in its opinion may reasonably be necessary for changing the construction or providing for the proper operation of the swimming pool to meet the provisions of sections 71-4301 to 71-4307. If and when the duly authorized representative of the department upon inspection and investigation of a swimming pool considers that the conditions are such as to warrant prompt closing of such swimming pool until the provisions of sections 71-4301 to 71-4307 are complied with, he or she shall notify the owner or operator of the swimming pool to prohibit any person from using the swimming pool and upon such notification to the sheriff and the county attorney of the county in which such pool is located, it shall be the duty of such county attorney and sheriff to see that the notice of the representative of the department shall be enforced. If and when the owner or operator of the pool has, in the opinion of the department, met the provisions of sections 71-4301 to 71-4307, the department may in writing authorize the use again of such swimming pool.

Source: Laws 1969, c. 760, § 6, p. 2876; Laws 1996, LB 1044, § 673; Laws 2007, LB296, § 584. Operative date July 1, 2007.

ARTICLE 44

RABIES

Section.

- 71-4401. Terms, defined.
- 71-4402. Vaccination against rabies; required; vaccine; sales.
- 71-4402.02. Hybrid animal; vaccination against rabies; required; vaccine; sales.
- 71-4402.03. Control and prevention of rabies; rules and regulations.
- 71-4403. Veterinarian; vaccination for rabies; certificate; contents.
- 71-4404. Vaccination for rabies; cost; payment.
- 71-4405. Vaccination; domestic animals exempt.
- 71-4406. Seizure by rabies control authority; confinement by owner; test authorized.
- 71-4407. Domestic or hybrid animal bitten by a rabid animal; disposition.
- 71-4408. Rabies control authority; pounds; authorized; impoundment; notice; release; fee.
- 71-4409. Rabies control authority; enforcement of sections; duties.
- 71-4410. Violation; penalty; order for seizure.
- 71-4412. Control of rabies; vaccination; enforcement; political subdivisions.

71-4401 Terms, defined. For purposes of sections 71-4401 to 71-4412, unless the context otherwise requires:

- (1) Domestic animal means any dog or cat, and cat means a cat which is a household pet;
- (2) Vaccination against rabies means the inoculation of a domestic or hybrid animal with a rabies vaccine as approved by the rules and regulations adopted and promulgated by the department. Such vaccination shall be performed by a veterinarian duly licensed to practice veterinary medicine in the State of Nebraska;
- (3) Compendium means the compendium of animal rabies vaccine as provided by the National Association of State Public Health Veterinarians;
- (4) Department means the Department of Health and Human Services;
- (5) Hybrid animal means any animal which is the product of the breeding of a domestic dog with a nondomestic canine species;
- (6) Own, unless otherwise specified, means to possess, keep, harbor, or have control of, charge of, or custody of a domestic or hybrid animal. This term does not apply to domestic or hybrid animals owned by other persons which are temporarily maintained on the premises of a veterinarian or kennel operator for a period of not more than thirty days;
- (7) Owner means any person possessing, keeping, harboring, or having charge or control of any domestic or hybrid animal or permitting any domestic or hybrid animal to habitually be or remain on or be lodged or fed within such person's house, yard, or premises. This term does not apply to veterinarians or kennel operators temporarily maintaining on their premises domestic or hybrid animals owned by other persons for a period of not more than thirty days; and

(8) Rabies control authority means county, township, city, or village health and law enforcement officials who shall enforce sections 71-4401 to 71-4412 relating to the vaccination and impoundment of domestic or hybrid animals. Such public officials are not responsible for any accident or disease of a domestic or hybrid animal resulting from the enforcement of such sections.

Source: Laws 1969, c. 445, § 1, p. 1484; Laws 1987, LB 104, § 1; Laws 1996, LB 1044, § 674; Laws 2000, LB 1115, § 75; Laws 2007, LB25, § 1; Laws 2007, LB296, § 585.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 25, section 1, with LB 296, section 585, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 25 became effective September 1, 2007.

71-4402 Vaccination against rabies; required; vaccine; sales. (1) Every domestic animal in the State of Nebraska shall be vaccinated against rabies with a licensed vaccine and revaccinated at intervals specified by rules and regulations adopted and promulgated by the department. Young domestic animals shall be initially vaccinated at the age specified in such rules and regulations. Unvaccinated domestic animals acquired or moved into the State of Nebraska shall be vaccinated within thirty days after purchase or arrival unless under the age for initial vaccination.

(2) The rabies vaccine used to vaccinate domestic animals pursuant to this section shall be sold only to licensed veterinarians.

Source: Laws 1969, c. 445, § 2, p. 1485; Laws 1987, LB 104, § 2; Laws 1990, LB 888, § 1; Laws 2007, LB25, § 2.
Effective date September 1, 2007.

71-4402.02 Hybrid animal; vaccination against rabies; required; vaccine; sales. (1) Except as provided in subsection (3) of this section, every hybrid animal in the State of Nebraska shall be vaccinated against rabies and shall be revaccinated at intervals specified by rules and regulations adopted and promulgated by the department. A young hybrid animal shall be initially vaccinated at the age specified in such rules and regulations. An unvaccinated hybrid animal acquired or moved into the State of Nebraska shall be vaccinated within thirty days after purchase or arrival unless under the age for initial vaccination.

(2) The rabies vaccine used to vaccinate a hybrid animal pursuant to this section shall be sold only to licensed veterinarians.

(3) An owner of a hybrid animal in this state prior to the date of development of a licensed vaccine determined scientifically to be reliable in preventing rabies in a hybrid animal shall have one year after such date to comply with this section.

Source: Laws 2007, LB25, § 3.
Effective date September 1, 2007.

71-4402.03 Control and prevention of rabies; rules and regulations. The department shall adopt and promulgate rules and regulations for the control and prevention of rabies. Such rules and regulations shall generally comply with the compendium and the recommendations of the United States Public Health Service. The department may consider changes in the compendium and recommendations of the United States Public Health Service when adopting and promulgating such rules and regulations.

Source: Laws 2007, LB25, § 4.
Effective date September 1, 2007.

71-4403 Veterinarian; vaccination for rabies; certificate; contents. It shall be the duty of each veterinarian, at the time of vaccinating any domestic or hybrid animal, to complete a certificate of rabies vaccination which shall include, but not be limited to, the following information:

- (1) The owner's name and address;
- (2) An adequate description of the domestic or hybrid animal, including, but not limited to, such items as the domestic or hybrid animal's breed, sex, age, name, and distinctive markings;
- (3) The date of vaccination;
- (4) The rabies vaccination tag number;
- (5) The type of rabies vaccine administered;
- (6) The manufacturer's serial number of the vaccine used; and
- (7) The site of vaccination.

Such veterinarian shall issue a tag with the certificate of vaccination.

Source: Laws 1969, c. 445, § 3, p. 1485; Laws 1987, LB 104, § 3; Laws 2007, LB25, § 5.
Effective date September 1, 2007.

71-4404 Vaccination for rabies; cost; payment. The cost of rabies vaccination shall be borne by the owner of the domestic or hybrid animal.

Source: Laws 1969, c. 445, § 4, p. 1486; Laws 1987, LB 104, § 4; Laws 2007, LB25, § 6.
Effective date September 1, 2007.

71-4405 Vaccination; domestic animals exempt. (1) The provisions of sections 71-4401 to 71-4412 with respect to vaccination shall not apply to any domestic or hybrid animal owned by a person temporarily remaining within the State of Nebraska for less than thirty days, to any domestic or hybrid animal brought into the State of Nebraska for field trial or show purposes, or to any domestic or hybrid animal brought into the state for hunting purposes for a period of less than thirty days. Such domestic or hybrid animals shall be kept under strict supervision of the owner. It shall be unlawful to bring any domestic or hybrid animal into the State of Nebraska which does not comply with the animal health laws and import rules and regulations of the State of Nebraska which are applicable to domestic or hybrid animals.

(2) Domestic or hybrid animals assigned to a research institution or a similar facility shall be exempt from sections 71-4401 to 71-4412.

Source: Laws 1969, c. 445, § 5, p. 1486; Laws 1987, LB 104, § 5; Laws 2007, LB25, § 7.
Effective date September 1, 2007.

71-4406 Seizure by rabies control authority; confinement by owner; test authorized. (1) Any animal which is owned by a person and has bitten any person or caused an abrasion of the skin of any person shall be seized by the rabies control authority for a period of not less than ten days if:

(a) The animal is suspected of having rabies, regardless of the species and whether or not the animal has been vaccinated;

(b) The animal is not vaccinated and is of a species determined by the department to be a rabid species; or

(c) The animal is of a species which has been determined by the department to be a rabid species not amenable to rabies protection by immunization, whether or not such animal has been vaccinated.

If, after observation and examination by a veterinarian, at the end of the ten-day period the animal shows no clinical signs of rabies, the animal may be released to its owner.

(2)(a) Except as provided in subdivision (b) of this subsection, whenever any person has been bitten or has an abrasion of the skin caused by an animal owned by another person, which animal has been vaccinated in accordance with sections 71-4402 and 71-4402.02, or if such injury to a person is caused by an owned animal determined by the department to be a rabid species amenable to rabies protection by immunization which has been vaccinated, such animal shall be confined by the owner or other responsible person as required by the rabies control authority for a period of at least ten days and shall be observed and examined by a veterinarian at the end of such ten-day period. If no clinical signs of rabies are found by the veterinarian, such animal may be released from confinement.

(b) A vaccinated animal owned by a law enforcement or governmental military agency which bites or causes an abrasion of the skin of any person during training or the performance of the animal's duties may be confined as provided in subdivision (a) of this subsection. Such agency shall maintain ownership of and shall control and supervise the actions of such animal for a period of fifteen days following such injury. If during such period the death of the animal occurs for any reason, a veterinarian shall within twenty-four hours of the death examine the tissues of the animal for clinical signs of rabies.

(3) Any animal of a rabid species which has bitten a person or caused an abrasion of the skin of a person and which is unowned or the ownership of which cannot be determined within seventy-two hours of the time of the bite or abrasion shall be immediately subject to any tests which the department believes are necessary to determine whether the animal is afflicted with rabies. The seventy-two-hour period shall include holidays and weekends and shall not be extended for any reason. The tests required by this subsection may include tests which require the animal to be destroyed.

Source: Laws 1969, c. 445, § 6, p. 1486; Laws 1987, LB 104, § 6; Laws 1989, LB 51, § 1; Laws 2007, LB25, § 8.
Effective date September 1, 2007.

71-4407 Domestic or hybrid animal bitten by a rabid animal; disposition. In the case of domestic or hybrid animals known to have been bitten by a rabid animal, the following rules shall apply:

(1) If the bitten or exposed domestic or hybrid animal has not been vaccinated in accordance with sections 71-4402 and 71-4402.02, such bitten or exposed domestic or hybrid animal shall be immediately destroyed unless the owner is willing to place such domestic or hybrid animal in strict isolation in a kennel under veterinary supervision for a period of not less than six months; and

(2) If the bitten or exposed domestic or hybrid animal has been vaccinated in accordance with sections 71-4402 and 71-4402.02, such domestic or hybrid animal shall be subject to the following procedure: (a) Such domestic or hybrid animal shall be immediately revaccinated and confined for a period of not less than thirty days following vaccination; (b) if such domestic or hybrid animal is not immediately revaccinated, such domestic or hybrid animal shall be confined in strict isolation in a kennel for a period of not less than six months under the supervision of a veterinarian; or (c) such domestic or hybrid animal shall be destroyed if the owner does not comply with either subdivision (a) or (b) of this subdivision.

Source: Laws 1969, c. 445, § 7, p. 1487; Laws 1987, LB 104, § 7; Laws 2007, LB25, § 9.
Effective date September 1, 2007.

71-4408 Rabies control authority; pounds; authorized; impoundment; notice; release; fee. (1) The rabies control authority may authorize an animal pound or pounds or may enter into a cooperative agreement with a licensed veterinarian for the establishment and operation of a pound.

(2) Any dog or hybrid of the family Canidae found outside the owner's premises whose owner does not possess a valid certificate of rabies vaccination and valid rabies vaccination tag for such dog or hybrid of the family Canidae shall be impounded. The rabies control authority may require the impoundment of domestic or hybrid animals other than dogs or hybrids of the family Canidae. All impounded domestic or hybrid animals shall be given proper care, treatment, and maintenance. Each impounded domestic or hybrid animal shall be kept and maintained at the pound for a period of not less than seventy-two hours unless reclaimed earlier by the owner.

(3) Notice of impoundment of all animals, including any significant marks of identification, shall be posted at the pound as public notification of impoundment. Any unvaccinated domestic or hybrid animal may be reclaimed by its owner during the period of impoundment by payment of prescribed pound fees and by complying with the rabies vaccination requirement of sections 71-4401 to 71-4412 within seventy-two hours of release. Any vaccinated domestic or hybrid animal impounded because its owner has not presented a valid certificate of rabies vaccination and a valid rabies vaccination tag for such domestic or hybrid

animal may be reclaimed by its owner by furnishing proof of rabies vaccination and payment of all impoundment fees prior to release.

(4) At the expiration of impoundment, a domestic or hybrid animal may be claimed by payment of established pound fees and by compliance with the rabies vaccination requirement of sections 71-4401 to 71-4412 within seventy-two hours of release. If the domestic or hybrid animal is unclaimed at the end of five days, the authorities may dispose of the domestic or hybrid animal in accordance with applicable laws or rules and regulations.

Source: Laws 1969, c. 445, § 8, p. 1487; Laws 1987, LB 104, § 8; Laws 2007, LB25, § 10.
Effective date September 1, 2007.

71-4409 Rabies control authority; enforcement of sections; duties. The rabies control authority shall enforce sections 71-4401 to 71-4412.

In the event that the health and law enforcement officials of a county, township, city, or village fail to act with sufficient promptness in enforcing sections 71-4401 to 71-4412, the department may take all actions necessary for the proper administration and enforcement of such sections relating to vaccination and impoundment of domestic or hybrid animals. In such a case no authorized representatives of the department or any law enforcement officials enforcing such sections shall be responsible for any accident or disease of a domestic or hybrid animal resulting from the enforcement of such sections.

Source: Laws 1969, c. 445, § 9, p. 1488; Laws 1987, LB 104, § 9; Laws 2007, LB25, § 11.
Effective date September 1, 2007.

71-4410 Violation; penalty; order for seizure. The owner of any domestic or hybrid animal or any person who violates any of the provisions of sections 71-4401 to 71-4412 shall be guilty of a Class V misdemeanor. When the owner of any domestic or hybrid animal or other animal fails or refuses to comply with section 71-4406 or 71-4407, the rabies control authority shall obtain an order for seizure of such animal pursuant to Chapter 29, article 8.

Source: Laws 1969, c. 445, § 10, p. 1488; Laws 1978, LB 685, § 1; Laws 1987, LB 104, § 10; Laws 2007, LB25, § 12.
Effective date September 1, 2007.

71-4412 Control of rabies; vaccination; enforcement; political subdivisions. In the State of Nebraska, all laws, ordinances, codes, or rules and regulations concerning the control of rabies or the vaccination of domestic or hybrid animals against rabies shall be enforced by the county, township, city, and village health and law enforcement officials or those other officers with regulatory authority as specified by the governing political subdivisions.

Whenever a county, township, city, or village requires the licensure of domestic or hybrid animals, it may require that, before a license is issued for the possession or maintenance of any domestic or hybrid animal in any such county, township, city, or village, the owner or keeper of the domestic or hybrid animal shall furnish to the clerk of such political subdivision

a certification that the domestic or hybrid animal has been vaccinated against rabies in accordance with sections 71-4401 to 71-4412.

Source: Laws 1969, c. 445, § 12, p. 1489; Laws 1987, LB 104, § 11; Laws 2007, LB25, § 13.
Effective date September 1, 2007.

ARTICLE 46

MANUFACTURED HOMES, RECREATIONAL VEHICLES, AND MOBILE HOME PARKS

(b) MOBILE HOME PARKS

Section.

71-4621. Terms, defined.

71-4624. License; application; fees; inspection.

71-4635. Fire safety inspection; fee.

(b) MOBILE HOME PARKS

71-4621 Terms, defined. As used in the Uniform Standard Code for Mobile Home Parks, unless the context otherwise requires:

(1) Mobile home means a movable or portable dwelling constructed to be towed on its own chassis, connected to utilities, and designed with or without a permanent foundation for year-round living. It may consist of one or more units that can be telescoped when towed and expanded later for additional capacity, or of two or more units, separately towable but designed to be joined into one integral unit. Mobile home includes a manufactured home as defined in section 71-4603;

(2) Mobile home lot means a designated portion of a mobile home park designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants;

(3) Mobile home park means a parcel or contiguous parcels of land which have been so designated and improved that it contains two or more mobile home lots available to the general public for the placement thereon of mobile homes for occupancy. The term mobile home park shall not be construed to include mobile homes, buildings, tents, or other structures temporarily maintained by any individual, corporation, limited liability company, company, or other entity on its own premises and used exclusively to house its own labor force;

(4) Department means the Department of Health and Human Services; and

(5) Person means any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock company or association, political subdivision, governmental agency, or other legal entity, and includes any trustee, receiver, assignee, or other legal representative thereof.

Source: Laws 1976, LB 91, § 1; Laws 1985, LB 313, § 24; Laws 1993, LB 121, § 436; Laws 1996, LB 1044, § 678; Laws 2007, LB296, § 586.
Operative date July 1, 2007.

71-4624 License; application; fees; inspection. (1) The application for the first or initial annual license shall be submitted with the requirements mentioned in section 71-4623 accompanied by the appropriate fees. The department by regulation shall charge engineering firms, mobile home park owners and operators, and other appropriate parties fees established by regulation for the review of plans and specifications of a mobile home park, the issuance of a license or permit, the inspection of a mobile home park, and any other services rendered at a rate which defrays no more than the actual costs of the services provided. All fees shall be paid as a condition of annual renewal of licensure or of continuance of licensure.

(2) All fees collected by the department shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money credited to the fund pursuant to this section shall be used by the department for the purpose of administering the Uniform Standard Code for Mobile Home Parks.

(3) When any application is received, the department shall cause the mobile home park and appurtenances to be inspected by representatives of the department. When such inspection has been made and the department finds that all of the provisions of the Uniform Standard Code for Mobile Home Parks and the rules, regulations, and standards of the department have been met by the applicant, the department shall issue an annual license. Inspection by the department or its authorized representatives at any time of a mobile home park shall be a condition of continued licensure.

Source: Laws 1976, LB 91, § 4; Laws 1983, LB 617, § 25; Laws 1984, LB 916, § 63; Laws 1986, LB 1047, § 6; Laws 1991, LB 703, § 51; Laws 1996, LB 1044, § 679; Laws 2007, LB296, § 587.
Operative date July 1, 2007.

71-4635 Fire safety inspection; fee. The Department of Health and Human Services may request the State Fire Marshal to inspect for fire safety any mobile home park for which a license or renewal of a license is sought, pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01 and payable by the licensee or applicant for a license. The authority to make such investigations may be delegated to qualified local fire prevention personnel pursuant to section 81-502.

Source: Laws 1983, LB 498, § 4; Laws 1996, LB 1044, § 680; Laws 2007, LB296, § 588.
Operative date July 1, 2007.

ARTICLE 47

HEARING

(a) HEARING AIDS

Section.

71-4701. Terms, defined.

71-4702. Sale or fitting of hearing aids; license required; posting.

71-4702.01. Repealed. Laws 2007, LB 463, § 1319.

- 71-4703. Transferred to section 38-1511.
- 71-4704. Transferred to section 38-1510.
- 71-4706. Repealed. Laws 2007, LB 463, § 1319.
- 71-4707. License; examination; conditions; exception.
- 71-4708. Transferred to section 38-1513.
- 71-4709. Transferred to section 38-1514.
- 71-4709.01. Repealed. Laws 2007, LB 463, § 1319.
- 71-4710. Repealed. Laws 2007, LB 463, § 1319.
- 71-4711. Repealed. Laws 2007, LB 463, § 1319.
- 71-4712. Transferred to section 38-1517.
- 71-4714. Repealed. Laws 2007, LB 463, § 1319.
- 71-4714.01. Transferred to section 38-1518.
- 71-4715. Transferred to section 38-1508.
- 71-4715.01. Repealed. Laws 2007, LB 463, § 1319.
- 71-4716. Repealed. Laws 2007, LB 463, § 1319.
- 71-4717. Repealed. Laws 2007, LB 463, § 1319.
- 71-4719. Repealed. Laws 2007, LB 463, § 1319.

(b) COMMISSION FOR THE DEAF AND HARD OF HEARING

- 71-4728.05. Interpreter Review Board; members; duties; expenses.

(c) INFANT HEARING ACT

- 71-4737. Hearing loss; tracking system.
- 71-4738. Federal funding.
- 71-4739. Birthing facility; confirmatory testing facility; reports required.
- 71-4740. Hearing loss educational information.
- 71-4741. Hearing screening; department; duties.
- 71-4742. Hearing screening test; newborn; standard of care.
- 71-4743. Referral guidelines.
- 71-4744. Rules and regulations.

(a) HEARING AIDS

71-4701 Terms, defined. As used in sections 71-4701 to 71-4719, unless the context otherwise requires:

- (1) Department shall mean the Department of Health and Human Services;
- (2) License shall mean a license issued by the state under such sections to hearing aid instrument dispensers and fitters;
- (3) Temporary license shall mean a license issued while the applicant is in training to become a licensed hearing aid instrument dispenser and fitter;
- (4) Board shall mean the Board of Hearing Aid Instrument Dispensers and Fitters;
- (5) Hearing aid shall mean any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments,

or accessories, including earmold, but excluding batteries and cords. A hearing aid shall also be known as a hearing instrument;

(6) Practice of fitting hearing aids shall mean the measurement of human hearing by means of an audiometer or by other means approved by the board solely for the purpose of making selections, adaptations, or sale of hearing aids. The term also includes the making of impressions for earmolds. A dispenser, at the request of a physician or a member of related professions, may make audiograms for the professional's use in consultation with the hard-of-hearing; and

(7) Sell, sale, or dispense shall mean any transfer of title or of the right to use by lease, bailment, or any other contract, excluding (a) wholesale transactions with distributors or dispensers and (b) distribution of hearing aids by nonprofit service organizations at no cost to the recipient for the hearing aid.

Source: Laws 1969, c. 767, § 1, p. 2903; Laws 1986, LB 701, § 1; Laws 1987, LB 473, § 50; Laws 1988, LB 1100, § 148; Laws 1996, LB 1044, § 681; Laws 2007, LB296, § 589; Laws 2007, LB463, § 566. Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 566, and transferred to section 38-1502 operative on December 1, 2008.

71-4702 Sale or fitting of hearing aids; license required; posting. (1) No person shall engage in the sale of or practice of fitting hearing aids or display a sign or in any other way advertise or represent himself or herself as a person who practices the fitting and sale or dispensing of hearing aids unless he or she holds an unsuspended, unrevoked license issued by the department as provided in sections 71-4701 to 71-4719. The license shall be conspicuously posted in his or her office or place of business. A license shall confer upon the holder the right to select, fit, and sell hearing aids.

(2) A licensed audiologist who maintains a practice pursuant to licensure as an audiologist in which hearing aids are regularly dispensed or who intends to maintain such a practice shall also be licensed pursuant to subsection (4) of section 71-4707.

(3) Nothing in sections 71-4701 to 71-4719 shall prohibit a corporation, partnership, limited liability company, trust, association, or other like organization maintaining an established business address from engaging in the business of selling or offering for sale hearing aids at retail without a license if it employs only properly licensed natural persons in the direct sale and fitting of such products. Such corporation, partnership, limited liability company, trust, association, or like organization shall file annually with the board a list of all licensed hearing aid instrument dispensers and fitters directly or indirectly employed by it. Such corporation, partnership, limited liability company, trust, association, or like organization shall also file with the board a statement on a form approved by the board that it submits itself to the rules and regulations of the department and the provisions of such sections which the department deems applicable.

(4) Nothing in such sections shall prohibit the holder of a license from the fitting and sale of wearable instruments or devices designed for or offered for the purpose of conservation or protection of hearing.

Source: Laws 1969, c. 767, § 2, p. 2904; Laws 1986, LB 701, § 2; Laws 1988, LB 1100, § 149; Laws 1992, LB 1019, § 79; Laws 1993, LB 121, § 438; Laws 2007, LB247, § 52; Laws 2007, LB247, § 70; Laws 2007, LB463, § 573.
Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 247, section 70, and LB 463, section 573, and transferred to section 38-1509 operative on December 1, 2008.

71-4702.01 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-4703 Transferred to section 38-1511.

71-4704 Transferred to section 38-1510.

71-4706 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-4707 License; examination; conditions; exception. (1) Any person may obtain a license by successfully passing a qualifying examination if the applicant:

- (a) Is at least twenty-one years of age;
- (b) Is of good moral character;
- (c) Has an education equivalent to a four-year course in an accredited high school; and
- (d) Is free of contagious or infectious disease.

(2) Each applicant for license by examination shall appear at a time and place and before such persons as the department may designate to be examined by means of written and practical tests in order to demonstrate that he or she is qualified to practice the fitting and sale of hearing aids. The examination shall not be conducted in such a manner that college training is required in order to pass. Nothing in this examination shall imply that the applicant is required to possess the degree of medical competence normally expected of physicians.

(3) The department shall give examinations as determined by the board, except that a minimum of two examinations shall be offered each calendar year.

(4) The department shall issue a license without examination to a licensed audiologist who maintains a practice pursuant to licensure as an audiologist in which hearing aids are regularly dispensed or who intends to maintain such a practice upon application to the department, proof of licensure, and payment of a twenty-five-dollar fee.

Source: Laws 1969, c. 767, § 7, p. 2907; Laws 1986, LB 701, § 6; Laws 1987, LB 473, § 53; Laws 1988, LB 1100, § 153; Laws 2007, LB247, § 53; Laws 2007, LB247, § 71; Laws 2007, LB463, § 576.
Operative date June 1, 2007.

Note: This section was also amended by Laws 2007, LB 247, section 71, and LB 463, section 576, and transferred to section 38-1512 operative on December 1, 2008.

71-4708 Transferred to section 38-1513.

71-4709 Transferred to section 38-1514.

71-4709.01 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-4710 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-4711 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-4712 Transferred to section 38-1517.

71-4714 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-4714.01 Transferred to section 38-1518.

71-4715 Transferred to section 38-1508.

71-4715.01 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-4716 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-4717 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-4719 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

(b) COMMISSION FOR THE DEAF AND HARD OF HEARING

71-4728.05 Interpreter Review Board; members; duties; expenses. (1) The commission shall appoint the Interpreter Review Board as required in section 20-156.

(2) Members of the Interpreter Review Board shall be as follows:

(a) A representative of the Department of Health and Human Services and the executive director of the commission or his or her designee, both of whom shall serve continuously and without limitation;

(b) One qualified interpreter, appointed for a term to expire on June 30, 2008;

(c) One representative of local government, appointed for a term to expire on June 30, 2008;

(d) One deaf or hard of hearing person, appointed for a term to expire on June 30, 2009;

(e) One qualified interpreter, appointed for a term to expire on June 30, 2009;

(f) One deaf or hard of hearing person, appointed for a term to expire on June 30, 2010; and

(g) One representative of local government, appointed for a term to expire on June 30, 2010.

(3) Upon the expiration of the terms described in subsection (2) of this section, members other than those identified in subdivision (2)(a) of this section shall be appointed for terms of three years. No such member may serve more than two consecutive three-year terms beginning June 30, 2007, except that members whose terms have expired shall continue to serve until their successors have been appointed and qualified.

(4) The commission may remove a member of the board for inefficiency, neglect of duty, or misconduct in office after delivering to such member a copy of the charges and a public hearing in accordance with the Administrative Procedure Act. If a vacancy occurs on the board, the commission shall appoint another member with the same qualifications as the vacating member to serve the remainder of the term. The members of the board shall receive no compensation but shall be reimbursed for their actual and necessary expenses, as provided in sections 81-1174 to 81-1177, in attending meetings of the commission and in carrying out their official duties as provided in this section and section 20-156.

(5) The board shall establish policies, standards, and procedures for evaluating and licensing interpreters, including, but not limited to, testing, training, issuance, renewal, and denial of licenses, continuing education and continuing competency assessment, investigation of complaints, and disciplinary actions against a license pursuant to section 20-156.

Source: Laws 2002, LB 22, § 17; Laws 2006, LB 87, § 5; Laws 2007, LB296, § 590.
Operative date July 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

(c) INFANT HEARING ACT

71-4737 Hearing loss; tracking system. The Legislature recognizes that it is necessary to track newborns and infants identified with a potential hearing loss or who have been evaluated and have been found to have a hearing loss for a period of time in order to render appropriate followup care. The Department of Health and Human Services shall determine and implement the most appropriate system for this state which is available to track newborns and infants identified with a hearing loss. It is the intent of the Legislature that the tracking system provide the department and Legislature with the information necessary to effectively plan and establish a comprehensive system of developmentally appropriate services for newborns and infants who have a potential hearing loss or who have been found to have a hearing loss and shall reduce the likelihood of associated disabling conditions for such newborns and infants.

Source: Laws 2000, LB 950, § 4; Laws 2005, LB 301, § 44; Laws 2007, LB296, § 591.
Operative date July 1, 2007.

71-4738 Federal funding. The Department of Health and Human Services shall apply for all available federal funding to implement the Infant Hearing Act.

Source: Laws 2000, LB 950, § 5; Laws 2005, LB 301, § 45; Laws 2007, LB296, § 592.
Operative date July 1, 2007.

71-4739 Birthing facility; confirmatory testing facility; reports required. (1)

Every birthing facility shall annually report to the Department of Health and Human Services the number of:

- (a) Newborns born;
- (b) Newborns and infants recommended for a hearing screening test;
- (c) Newborns who received a hearing screening test during birth admission;
- (d) Newborns who passed a hearing screening test during birth admission if administered;
- (e) Newborns who did not pass a hearing screening test during birth admission if administered; and
- (f) Newborns recommended for monitoring, intervention, and followup care.

(2) Every confirmatory testing facility shall annually report to the Department of Health and Human Services the number of:

- (a) Newborns and infants who return for a followup hearing test;
- (b) Newborns and infants who do not have a hearing loss based upon the followup hearing test; and
- (c) Newborns and infants who are shown to have a hearing loss based upon the followup hearing test.

Source: Laws 2000, LB 950, § 6; Laws 2005, LB 301, § 46; Laws 2007, LB296, § 593.
Operative date July 1, 2007.

71-4740 Hearing loss educational information. (1) Every birthing facility shall educate the parents of newborns born in such facilities of the importance of receiving a hearing screening test and any necessary followup care. This educational information shall explain, in lay terms, the hearing screening test, the likelihood of the newborn having a hearing loss, followup procedures, and community resources, including referral for early intervention services under the Early Intervention Act. The educational information shall also include a description of the normal auditory, speech, and language developmental process in children. Education shall not be considered a substitute for the hearing screening test.

(2) If a newborn is not born in a birthing facility, the Department of Health and Human Services shall educate the parents of such newborns of the importance of receiving a hearing screening test and any necessary followup care. The department shall also give parents information to assist them in having the test performed within three months after the date of the child's birth.

Source: Laws 2000, LB 950, § 7; Laws 2005, LB 301, § 47; Laws 2007, LB296, § 594.
Operative date July 1, 2007.

Cross Reference

Early Intervention Act, see section 43-2501.

71-4741 Hearing screening; department; duties. (1) The Department of Health and Human Services shall determine which birthing facilities are administering hearing screening tests to newborns and infants on a voluntary basis and the number of newborns and infants screened. The department shall annually report to the Legislature the number of:

(a) Birthing facilities administering voluntary hearing screening tests during birth admission;

(b) Newborns screened as compared to the total number of newborns born in such facilities;

(c) Newborns who passed a hearing screening test during birth admission if administered;

(d) Newborns who did not pass a hearing screening test during birth admission if administered; and

(e) Newborns recommended for followup care.

(2) The Department of Health and Human Services, in consultation with the State Department of Education, birthing facilities, and other providers, shall develop approved screening methods and protocol for statewide hearing screening tests of substantially all newborns and infants.

(3) Subject to available appropriations, the Department of Health and Human Services shall make the report described in this section available.

Source: Laws 2000, LB 950, § 8; Laws 2005, LB 301, § 48; Laws 2007, LB296, § 595.
Operative date July 1, 2007.

71-4742 Hearing screening test; newborn; standard of care. (1) Each birthing facility shall include a hearing screening test as part of its standard of care for newborns and shall establish a mechanism for compliance review. A hearing screening test shall be conducted on no fewer than ninety-five percent of the newborns born in this state.

(2) If the number of newborns receiving a hearing screening test does not equal or exceed ninety-five percent of the total number of newborns born in this state on or before December 1, 2003, or falls below ninety-five percent at any time thereafter, the Department of Health and Human Services shall immediately adopt and promulgate rules and regulations implementing a hearing screening program. The hearing screening program shall provide for a hearing screening test that every newborn born in this state shall undergo and shall provide that the hearing screening test be completed during birth admission or, if that is not possible, no later than three months after birth. Notwithstanding this section, it is the goal of this state to achieve a one-hundred-percent screening rate.

Source: Laws 2000, LB 950, § 9; Laws 2005, LB 301, § 49; Laws 2007, LB296, § 596.
Operative date July 1, 2007.

71-4743 Referral guidelines. The Department of Health and Human Services and the State Department of Education shall establish guidelines for when a referral shall be made for early intervention services under the Early Intervention Act. The guidelines shall include a request for an individual evaluation of a child suspected of being deaf or hard of hearing as defined in section 79-1118.01.

Source: Laws 2000, LB 950, § 10; Laws 2005, LB 301, § 50; Laws 2007, LB296, § 597.
Operative date July 1, 2007.

Cross Reference

Early Intervention Act, see section 43-2501.

71-4744 Rules and regulations. The Department of Health and Human Services shall adopt and promulgate rules and regulations necessary to implement the Infant Hearing Act.

Source: Laws 2000, LB 950, § 11; Laws 2005, LB 301, § 51; Laws 2007, LB296, § 598.
Operative date July 1, 2007.

ARTICLE 48

ANATOMICAL GIFTS

(a) UNIFORM ANATOMICAL GIFT ACT

Section.

71-4807. Rights and duties at death.

71-4810. Legal liability; exemption; exceptions.

(b) MISCELLANEOUS PROVISIONS

71-4813. Eye tissue; pituitary gland; removal; when authorized.

71-4816. Certificate of death; attestation required; statistical information.

(c) BONE MARROW DONATIONS

71-4819. Department of Health and Human Services; education regarding bone marrow donors; powers and duties.

(a) UNIFORM ANATOMICAL GIFT ACT

71-4807 Rights and duties at death. (1) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he or she may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(2) The time of death shall be determined by a physician who attends the donor at his or her death or, if none, the physician who certifies the death. This physician shall not participate in the procedures for removing or transplanting a part, except the enucleation of eyes. An appropriately qualified designee of a physician with training in ophthalmologic techniques or a funeral director and embalmer licensed pursuant to the Funeral Directing and Embalming Practice Act upon (a) successfully completing a course in eye enucleation and (b) receiving

a certificate of competence from the Department of Ophthalmology, College of Medicine of the University of Nebraska, may enucleate the eyes of the donor.

(3) A person who acts in good faith in accord with the terms of the Uniform Anatomical Gift Act or under the anatomical gift laws of another state shall not be liable for damages in any civil action or subject to prosecution in any criminal proceeding for his or her act.

(4) The Uniform Anatomical Gift Act shall be subject to the laws of this state prescribing powers and duties with respect to autopsies.

Source: Laws 1971, LB 799, § 7; Laws 1976, LB 764, § 3; Laws 1986, LB 1228, § 1; Laws 1993, LB 187, § 36; Laws 2007, LB463, § 1218.
Operative date December 1, 2008.

Cross Reference

Funeral Directing and Embalming Practice Act, see section 38-1401.

71-4810 Legal liability; exemption; exceptions. No physician, surgeon, hospital, blood bank, tissue bank, funeral director and embalmer licensed under the Funeral Directing and Embalming Practice Act, or other person or entity who donates, obtains, prepares, transplants, injects, transfuses, or otherwise transfers, or who assists or participates in obtaining, preparing, transplanting, injecting, transfusing, or transferring any tissue, organ, blood, or component thereof from one or more human beings, living or dead, to another human being, shall be liable in damages as a result of any such activity, save and except that each such person or entity shall remain liable in damages for his, her, or its own negligence or willful misconduct.

Source: Laws 1971, LB 799, § 10; Laws 1976, LB 764, § 4; Laws 1993, LB 187, § 37; Laws 2007, LB463, § 1219.
Operative date December 1, 2008.

Cross Reference

Funeral Directing and Embalming Practice Act, see section 38-1401.

(b) MISCELLANEOUS PROVISIONS

71-4813 Eye tissue; pituitary gland; removal; when authorized. When an autopsy is performed by the physician authorized by the county coroner to perform such autopsy, the physician or an appropriately qualified designee with training in ophthalmologic techniques, as provided for in subsection (2) of section 71-4807, may remove eye tissue of the decedent for the purpose of transplantation. The physician may also remove the pituitary gland for the purpose of research and treatment of hypopituitary dwarfism and of other growth disorders. Removal of the eye tissue or the pituitary gland shall only take place if the:

- (1) Autopsy was authorized by the county coroner;
- (2) County coroner receives permission from the person having control of the disposition of the decedent's remains pursuant to section 38-1425; and
- (3) Removal of eye tissue or of the pituitary gland will not interfere with the course of any subsequent investigation or alter the decedent's post mortem facial appearance.

The removed eye tissue or pituitary gland shall be transported to the Department of Health and Human Services or any desired institution or health facility as prescribed by section 38-1427.

Source: Laws 1983, LB 60, § 1; Laws 1985, LB 130, § 2; Laws 1996, LB 1044, § 683; Laws 2007, LB296, § 599; Laws 2007, LB463, § 1220.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 599, with LB 463, section 1220, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-4816 Certificate of death; attestation required; statistical information. (1) The physician responsible for the completion and signing of the portion of the certificate of death entitled medical certificate of death or, if there is no such physician, the person responsible for signing the certificate of death shall attest on the death certificate whether organ or tissue donation was considered and whether consent was granted.

(2) The Department of Health and Human Services shall make available the number of organ and tissue donors in Nebraska for statistical purposes.

Source: Laws 1987, LB 74, § 3; Laws 1996, LB 1044, § 684; Laws 2007, LB296, § 600.
Operative date July 1, 2007.

(c) BONE MARROW DONATIONS

71-4819 Department of Health and Human Services; education regarding bone marrow donors; powers and duties. (1) The Department of Health and Human Services shall educate residents of the state about:

- (a) The need for bone marrow donors;
- (b) The procedures required to become registered as a potential bone marrow donor, including the procedures for determining tissue type; and
- (c) The medical procedures a donor must undergo to donate bone marrow and the attendant risks of the procedures.

(2) The department shall make special efforts to educate and recruit persons of racial and ethnic minorities to volunteer as potential bone marrow donors.

(3) The department may use the press, radio, and television and may place educational materials in appropriate health care facilities, blood banks, and state and local agencies. The department, in conjunction with the Director of Motor Vehicles, shall make educational materials available at all places where motor vehicle operators' licenses are issued or renewed.

Source: Laws 1992, LB 1099, § 1; Laws 1996, LB 1044, § 685; Laws 2007, LB296, § 601.
Operative date July 1, 2007.

ARTICLE 51

EMERGENCY MEDICAL SERVICES

(c) EMERGENCY MEDICAL SERVICES ACT

Section.

- 71-5172. Transferred to section 38-1201.
- 71-5173. Transferred to section 38-1202.
- 71-5174. Transferred to section 38-1203.
- 71-5175. Terms, defined.
- 71-5176. Transferred to section 38-1215.
- 71-5177. Transferred to section 38-1216.
- 71-5178. Transferred to section 38-1217.
- 71-5179. Transferred to section 38-1218.
- 71-5180. Repealed. Laws 2007, LB 463, § 1319.
- 71-5181. Repealed. Laws 2007, LB 463, § 1319.
- 71-5181.01. Transferred to section 38-1222.
- 71-5182. Repealed. Laws 2007, LB 463, § 1319.
- 71-5183. Transferred to section 38-1223.
- 71-5184. Transferred to section 38-1224.
- 71-5185. Patient data; confidentiality; immunity.
- 71-5186. Transferred to section 38-1226.
- 71-5187. Transferred to section 38-1227.
- 71-5188. Transferred to section 38-1228.
- 71-5189. Transferred to section 38-1229.
- 71-5190. Transferred to section 38-1230.
- 71-5191. Transferred to section 38-1220.
- 71-5192. Certificate or license issued prior to July 1, 1998; how treated.
- 71-5193. Transferred to section 38-1231.
- 71-5194. Transferred to section 38-1232.
- 71-5195. Transferred to section 38-1233.
- 71-5196. Transferred to section 38-1234.
- 71-5197. Department; accept gifts.
- 71-5198. Transferred to section 38-1236.
- 71-5199. Transferred to section 38-1237.
- 71-51,100. Repealed. Laws 2007, LB 463, § 1319.

(d) AUTOMATED EXTERNAL DEFIBRILLATOR

- 71-51,102. Automated external defibrillator; use; conditions; liability.

(e) NEBRASKA EMERGENCY MEDICAL SYSTEM OPERATIONS FUND
71-51,103. Nebraska Emergency Medical System Operations Fund; created; use; investment.

(c) EMERGENCY MEDICAL SERVICES ACT

71-5172 Transferred to section 38-1201.

71-5173 Transferred to section 38-1202.

71-5174 Transferred to section 38-1203.

71-5175 Terms, defined. For purposes of the Emergency Medical Services Act:

(1) Ambulance means any privately or publicly owned motor vehicle or aircraft that is especially designed, constructed or modified, and equipped and is intended to be used and is maintained or operated for the overland or air transportation of patients upon the streets, roads, highways, airspace, or public ways in this state, including funeral coaches or hearses, or any other motor vehicles or aircraft used for such purposes;

(2) Board means the Board of Emergency Medical Services;

(3) Department means the Department of Health and Human Services;

(4) Emergency medical service means the organization responding to a perceived individual need for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury;

(5) Out-of-hospital emergency care provider includes all certification classifications of emergency care providers established pursuant to the act;

(6) Patient means an individual who either identifies himself or herself as being in need of medical attention or upon assessment by an out-of-hospital emergency care provider has an injury or illness requiring treatment;

(7) Person means an individual, firm, partnership, limited liability company, corporation, company, association, or joint-stock company or association or group of individuals acting together for a common purpose and includes the State of Nebraska and any agency or political subdivision of the state;

(8) Physician medical director means a qualified physician who is responsible for the medical supervision of out-of-hospital emergency care providers and verification of skill proficiency of out-of-hospital emergency care providers pursuant to section 71-5178;

(9) Protocol means a set of written policies, procedures, and directions from a physician medical director to an out-of-hospital emergency care provider concerning the medical procedures to be performed in specific situations;

(10) Qualified physician means an individual who is licensed to practice medicine and surgery pursuant to sections 71-1,102 to 71-1,107.14 or osteopathic medicine and surgery pursuant to sections 71-1,137 to 71-1,141 and meets any other requirements established by rule and regulation;

(11) Qualified physician surrogate means a qualified, trained medical person designated by a qualified physician in writing to act as an agent for the physician in directing the actions or recertification of out-of-hospital emergency care providers; and

(12) Standing order means a direct order from the physician medical director to perform certain tasks for a patient under a specific set of circumstances.

Source: Laws 1997, LB 138, § 4; Laws 2007, LB296, § 602; Laws 2007, LB463, § 488.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 488, and transferred to section 38-1204 operative on December 1, 2008.

71-5176 Transferred to section 38-1215.

71-5177 Transferred to section 38-1216.

71-5178 Transferred to section 38-1217.

71-5179 Transferred to section 38-1218.

71-5180 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-5181 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-5181.01 Transferred to section 38-1222.

71-5182 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-5183 Transferred to section 38-1223.

71-5184 Transferred to section 38-1224.

71-5185 Patient data; confidentiality; immunity. (1) No patient data received or recorded by an emergency medical service or an out-of-hospital emergency care provider shall be divulged, made public, or released by an emergency medical service or an out-of-hospital emergency care provider, except that patient data may be released for purposes of treatment, payment, and other health care operations as defined and permitted under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2007, or as otherwise permitted by law. Such data shall be provided to the department for public health purposes pursuant to rules and regulations of the department. For purposes of this section, patient data means any data received or recorded as part of the records maintenance requirements of the Emergency Medical Services Act.

(2) Patient data received by the department shall be confidential with release only (a) in aggregate data reports created by the department on a periodic basis or at the request of an

individual, (b) as case-specific data to approved researchers for specific research projects, (c) as protected health information to a public health authority, as such terms are defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2007, and (d) as protected health information, as defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2007, to an emergency medical service, to an out-of-hospital emergency care provider, or to a licensed health care facility for purposes of treatment. A record may be shared with the emergency medical service or out-of-hospital emergency care provider that reported that specific record. Approved researchers shall maintain the confidentiality of the data, and researchers shall be approved in the same manner as described in section 81-666. Aggregate reports shall be public documents.

(3) No civil or criminal liability of any kind or character for damages or other relief or penalty shall arise or be enforced against any person or organization by reason of having provided patient data pursuant to this section.

Source: Laws 1997, LB 138, § 14; Laws 2003, LB 667, § 11; Laws 2007, LB185, § 42; Laws 2007, LB463, § 509.
Operative date September 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 509, and transferred to section 38-1225 operative on December 1, 2008.

71-5186 Transferred to section 38-1226.

71-5187 Transferred to section 38-1227.

71-5188 Transferred to section 38-1228.

71-5189 Transferred to section 38-1229.

71-5190 Transferred to section 38-1230.

71-5191 Transferred to section 38-1220.

71-5192 Certificate or license issued prior to July 1, 1998; how treated. An out-of-hospital emergency care provider or emergency medical service holding a valid certificate or license issued by the State of Nebraska prior to July 1, 1998, may perform any practice or procedure authorized for a holder of that type of certificate or license in accordance with rules and regulations in effect immediately prior to July 1, 1998, and until the rules and regulations are amended or repealed pursuant to the Emergency Medical Services Act. A certificate or license may be issued or renewed and will expire in accordance with the rules and regulations adopted pursuant to the Emergency Medical Technician-Paramedic Act, the First Responders Emergency Rescue Act, and sections 71-5101 to 71-5165 until those rules and regulations are amended or repealed pursuant to the Emergency Medical Services Act.

Source: Laws 1997, LB 138, § 21; Laws 2007, LB296, § 603; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-5193 Transferred to section 38-1231.

71-5194 Transferred to section 38-1232.

71-5195 Transferred to section 38-1233.

71-5196 Transferred to section 38-1234.

71-5197 Department; accept gifts. The department may accept from any person, in the name of and for the state, services, equipment, supplies, materials, or funds by way of bequest, gift, or grant for the purposes of promoting emergency medical care. Any such funds received shall be remitted to the state treasury and shall be credited by the State Treasurer to the Health and Human Services Cash Fund.

Source: Laws 1997, LB 138, § 26; Laws 2007, LB296, § 604; Laws 2007, LB463, § 519.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 519, and transferred to section 38-1235 operative on December 1, 2008.

71-5198 Transferred to section 38-1236.

71-5199 Transferred to section 38-1237.

71-51,100 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

(d) AUTOMATED EXTERNAL DEFIBRILLATOR

71-51,102 Automated external defibrillator; use; conditions; liability. (1) For purposes of this section:

(a) Automated external defibrillator means a device that:

(i) Is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and is capable of determining, without intervention of an operator, whether defibrillation should be performed; and

(ii) Automatically charges and requests delivery of an electrical impulse to an individual's heart when it has identified a condition for which defibrillation should be performed;

(b) Emergency medical service means an emergency medical service as defined in section 38-1207;

(c) Health care facility means a health care facility as defined in section 71-413;

(d) Health care practitioner facility means a health care practitioner facility as defined in section 71-414; and

(e) Health care professional means any person who is licensed, certified, or registered by the Department of Health and Human Services and who is authorized within his or her scope of practice to use an automated external defibrillator.

(2) Except for the action or omission of a health care professional acting in such capacity or in a health care facility, no person who delivers emergency care or treatment using an automated external defibrillator shall be liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of rendering such care or treatment in good faith. Nothing in this subsection shall be construed to (a) grant immunity for any willful, wanton, or grossly negligent acts of commission or omission or (b) limit the immunity provisions for certain health care professionals as provided in section 38-1232.

(3) A person acquiring an automated external defibrillator shall notify the local emergency medical service of the existence, location, and type of the defibrillator and of any change in the location of such defibrillator unless the defibrillator was acquired for use in a private residence, a health care facility, or a health care practitioner facility.

Source: Laws 1999, LB 498, § 1; Laws 2000, LB 819, § 111; Laws 2003, LB 667, § 12; Laws 2005, LB 176, § 1; Laws 2007, LB296, § 605; Laws 2007, LB463, § 1221.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 605, with LB 463, section 1221, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

(e) NEBRASKA EMERGENCY MEDICAL SYSTEM OPERATIONS FUND

71-51,103 Nebraska Emergency Medical System Operations Fund; created; use; investment. There is hereby created the Nebraska Emergency Medical System Operations Fund. The fund may receive gifts, bequests, grants, fees, or other contributions or donations from public or private entities. The fund shall be used to carry out the purposes of the Statewide Trauma System Act and the Emergency Medical Services Practice Act, including activities related to the design, maintenance, or enhancement of the statewide trauma system, support of emergency medical services programs, and support for the emergency medical services programs for children. The Department of Health and Human Services shall annually, on or before January 1, submit a report to the Legislature which includes a general accounting of the income and expenditures of the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2001, LB 191, § 2; Laws 2007, LB296, § 606; Laws 2007, LB463 § 1222.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 606, with LB 463, section 1222, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Emergency Medical Services Practice Act, see section 38-1201.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.
Statewide Trauma System Act, see section 71-8201.

ARTICLE 52

RESIDENT PHYSICIAN EDUCATION AND DENTAL EDUCATION PROGRAMS

(a) FAMILY PRACTICE RESIDENCY

Section.

71-5205. Family practice residency program; how funded.

(a) FAMILY PRACTICE RESIDENCY

71-5205 Family practice residency program; how funded. The family practice residency program may be funded in part by grants provided by the Department of Health and Human Services or agencies of the federal government. If such grants are provided, the Legislature shall not provide funding for such program.

Source: Laws 1975, LB 571, § 5; Laws 1996, LB 1044, § 711; Laws 2007, LB296, § 607.
Operative date July 1, 2007.

ARTICLE 53

DRINKING WATER

(a) NEBRASKA SAFE DRINKING WATER ACT

Section.

- 71-5301. Terms, defined.
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(b) DRINKING WATER STATE REVOLVING FUND ACT

- 71-5318. Drinking Water Facilities Loan Fund; Land Acquisition and Source Water Loan Fund; Drinking Water Administration Fund; created; use; investment.
- 71-5322. Department; powers and duties.

(a) NEBRASKA SAFE DRINKING WATER ACT

71-5301 Terms, defined. For purposes of the Nebraska Safe Drinking Water Act, unless the context otherwise requires:

- (1) Council means the Advisory Council on Public Water Supply;
- (2) Department means the Division of Public Health of the Department of Health and Human Services;
- (3) Director means the Director of Public Health of the Division of Public Health or his or her authorized representative;
- (4) Designated agent means any political subdivision or corporate entity having the demonstrated capability and authority to carry out in whole or in part the Nebraska Safe Drinking Water Act and with which the director has consummated a legal and binding contract covering specifically delegated responsibilities;
- (5) Major construction, extension, or alteration means those structural changes that affect the source of supply, treatment processes, or transmission of water to service areas but does not include the extension of service mains within established service areas;
- (6) Operator means the individual or individuals responsible for the continued performance of the water supply system or any part of such system during assigned duty hours;
- (7) Owner means any person owning or operating a public water system;
- (8) Person means any individual, corporation, firm, partnership, limited liability company, association, company, trust, estate, public or private institution, group, agency, political subdivision, or other entity or any legal successor, representative, agent, or agency of any of such entities;
- (9) Water supply system means all sources of water and their surroundings under the control of one owner and includes all structures, conduits, and appurtenances by means of which such water is collected, treated, stored, or delivered except service pipes between street mains and buildings and the plumbing within or in connection with the buildings served;
- (10)(a) Public water system means a system for providing the public with water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days per year. Public water system includes (i) any collection, treatment,

storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system and (ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Public water system does not include a special irrigation district. A public water system is either a community water system or a noncommunity water system.

(b) Service connection does not include a connection to a system that delivers water by a constructed conveyance other than a pipe if (i) the water is used exclusively for purposes other than residential uses, consisting of drinking, bathing, cooking, and other similar uses, (ii) the department determines that alternative water to achieve the equivalent level of public health protection provided by the Nebraska Safe Drinking Water Act and rules and regulations under the act is provided for residential or similar uses for drinking and cooking, or (iii) the department determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the Nebraska Safe Drinking Water Act and the rules and regulations under the act.

(c) Special irrigation district means an irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use if the system or the residential or similar users of the system comply with exclusion provisions of subdivision (b)(ii) or (iii) of this subdivision;

(11) Drinking water standards means rules and regulations adopted and promulgated pursuant to section 71-5302 which (a) establish maximum levels for harmful materials which, in the judgment of the director, may have an adverse effect on the health of persons and (b) apply only to public water systems;

(12) Lead free (a) when used with respect to solders and flux means solders and flux containing not more than two-tenths percent lead, (b) when used with respect to pipes and pipe fittings means pipes and pipe fittings containing not more than eight percent lead, and (c) when used with respect to plumbing fittings and fixtures intended by the manufacturer to dispense water for human ingestion means fittings and fixtures that are in compliance with standards established in accordance with 42 U.S.C. 300g-6(e) as such section existed on July 16, 2004;

(13) Community water system means a public water system that (a) serves at least fifteen service connections used by year-round residents of the area served by the system or (b) regularly serves at least twenty-five year-round residents;

(14) Noncommunity water system means a public water system that is not a community water system;

(15) Nontransient noncommunity water system means a public water system that is not a community water system and that regularly serves at least twenty-five of the same individuals over six months per year; and

(16) Small system means a public water system that regularly serves less than ten thousand individuals.

Source: Laws 1976, LB 821, § 1; Laws 1988, LB 383, § 1; Laws 1993, LB 121, § 441; Laws 1996, LB 1044, § 712; Laws 1997, LB 517, § 17; Laws 2001, LB 667, § 28; Laws 2003, LB 31, § 3; Laws 2004, LB 1005, § 98; Laws 2007, LB296, § 608; Laws 2007, LB463, § 1223.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 608, with LB 463, section 1223, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-5302 Drinking water and monitoring standards; harmful materials; how determined; applicability; priority system. (1) The director shall adopt and promulgate necessary minimum drinking water standards, in the form of rules and regulations, to insure that drinking water supplied to consumers through all public water systems shall not contain amounts of chemical, radiological, physical, or bacteriological material determined by the director to be harmful to human health.

(2) The director may adopt and promulgate rules and regulations to require the monitoring of drinking water supplied to consumers through public water systems for chemical, radiological, physical, or bacteriological material determined by the director to be potentially harmful to human health.

(3) In determining what materials are harmful or potentially harmful to human health and in setting maximum levels for such harmful materials, the director shall be guided by:

(a) General knowledge of the medical profession and related scientific fields as to materials and substances which are harmful to humans if ingested through drinking water; and

(b) General knowledge of the medical profession and related scientific fields as to the maximum amounts of such harmful materials which may be ingested by human beings, over varying lengths of time, without resultant adverse effects on health.

(4) Subject to section 71-5310, state drinking water standards shall apply to each public water system in the state, except that such standards shall not apply to a public water system:

(a) Which consists only of distribution and storage facilities and does not have any collection and treatment facilities;

(b) Which obtains all of its water from, but is not owned or operated by, a public water system to which such standards apply;

(c) Which does not sell water to any person; and

(d) Which is not a carrier which conveys passengers in interstate commerce.

(5) The director may adopt alternative monitoring requirements for public water systems in accordance with section 1418 of the federal Safe Drinking Water Act, as such section existed on May 22, 2001.

(6) The director may adopt a system for the ranking of safe drinking water projects with known needs or for which loan applications have been received by the director or the Department of Environmental Quality. In establishing the ranking system the director shall consider, among other things, the risk to human health, compliance with the federal Safe Drinking Water Act, as the act existed on May 22, 2001, and assistance to systems most in

need based upon affordability criteria adopted by the director. This priority system shall be reviewed annually by the director.

Source: Laws 1976, LB 821, § 2; Laws 1988, LB 383, § 3; Laws 1997, LB 517, § 18; Laws 2001, LB 667, § 30; Laws 2007, LB296, § 609.
Operative date July 1, 2007.

Cross Reference

Drinking water, standards for pesticide levels, see section 2-2626.

71-5303 Public water system; permit; director; powers; hearing; appeal. (1) No person shall operate or maintain a public water system without first obtaining a permit to operate such system from the director. No fee shall be charged for the issuance of such permit.

(2) The director shall inspect public water systems and report findings to the owner, publish a list of those systems not in compliance, and promote the training of operators. The director may deny or revoke a permit, issue administrative orders scheduling action to be taken, take emergency action as provided in section 71-5304.01, and seek a temporary or permanent injunction or such other legal process as is deemed necessary to obtain compliance with the Nebraska Safe Drinking Water Act.

(3) A permit may be denied or revoked for noncompliance with the act, the rules and regulations adopted and promulgated under the act, or the terms of a variance or exemption issued pursuant to section 71-5310.

(4) Any person shall be granted, upon request, an opportunity for a hearing before the department under the Administrative Procedure Act prior to the denial or revocation of a permit. The denial or revocation may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1976, LB 821, § 3; Laws 1988, LB 383, § 4; Laws 1988, LB 352, § 139; Laws 1996, LB 1044, § 713; Laws 2000, LB 1115, § 77; Laws 2001, LB 667, § 31; Laws 2003, LB 31, § 4; Laws 2007, LB296, § 610; Laws 2007, LB463, § 1224.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 610, with LB 463, section 1224, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

71-5304.01 Violations; administrative orders; director; emergency powers; hearing; administrative penalties. (1) Whenever the director has reason to believe that a violation of any provision of the Nebraska Safe Drinking Water Act, any rule or regulation adopted and promulgated under such act, or any term of a variance or exemption issued pursuant to section 71-5310 has occurred, he or she may cause an administrative order to be served upon the permittee or permittees alleged to be in violation. Such order shall specify the violation and the facts alleged to constitute a violation and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such order shall

become final unless the permittee or permittees named in the order request in writing a hearing before the director no later than thirty days after the date such order is served. In lieu of such order, the director may require that the permittee or permittees appear before the director at a time and place specified in the notice and answer the charges. The notice shall be served on the permittee or permittees alleged to be in violation not less than thirty days before the time set for the hearing.

(2) Whenever the director finds that an emergency exists requiring immediate action to protect the public health and welfare concerning a material which is determined by the director to be harmful or potentially harmful to human health, the director may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such order is directed shall comply immediately and, on written application to the director, shall be afforded a hearing as soon as possible and not later than ten days after receipt of such application by such affected person. On the basis of such hearing, the director shall continue such order in effect, revoke it, or modify it.

(3) The director shall afford to the alleged violator an opportunity for a fair hearing before the director under the Administrative Procedure Act.

(4) In addition to any other remedy provided by law, the director may issue an order assessing an administrative penalty upon a violator.

(5) The range of administrative penalties assessed under this section for a public water system serving ten thousand or more persons shall be not less than one thousand dollars per day or part thereof for each violation, not to exceed twenty-five thousand dollars in the aggregate. Administrative penalties for a small system shall be not more than five hundred dollars per day or part thereof for each violation, not to exceed five thousand dollars in the aggregate. In determining the amount of the administrative penalty, the department shall take into consideration all relevant circumstances, including, but not limited to, the harm or potential harm which the violation causes or may cause, the violator's previous compliance record, the nature and persistence of the violation, any corrective actions taken, and any other factors which the department may reasonably deem relevant. The administrative penalty assessment shall state specific amounts to be paid for each violation identified in the order.

(6) An administrative penalty shall be paid within sixty days after the date of issuance of the order assessing the penalty. Any person who fails to pay an administrative penalty by the final due date shall be liable to the state for the penalty amount plus any statutory interest rate applicable to judgments. An order under this section imposing an administrative penalty may be appealed to the director in the manner provided for in subsection (1) of this section. Any administrative penalty paid pursuant to this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. An action may be brought in the appropriate court to collect any unpaid administrative penalty and for attorney's fees and costs incurred directly in the collection of the penalty.

Source: Laws 1988, LB 383, § 5; Laws 1996, LB 1044, § 714; Laws 1997, LB 517, § 19; Laws 2001, LB 667, § 33; Laws 2007, LB296, § 611.
Operative date July 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

71-5304.02 Public water system; notice; requirements. (1) The director may require a public water system to give notice to the persons served by the system and to the department whenever the system:

(a) Is not in compliance with an applicable maximum contaminant level or treatment technique requirement of or a testing procedure prescribed by rules and regulations adopted and promulgated under the Nebraska Safe Drinking Water Act;

(b) Fails to perform monitoring, testing, analyzing, or sampling as required;

(c) Is subject to a variance or exemption; or

(d) Is not in compliance with the requirements prescribed by a variance or exemption.

(2) The director may require a public water system to give notice to the persons served by the public water system of potential sources of contamination as identified by the director under subsection (2) of section 71-5302, of possible health effects of such contamination, and of possible mitigation measures.

(3) The director shall by rule and regulation prescribe the form and manner for giving such notice.

Source: Laws 1988, LB 383, § 6; Laws 1996, LB 1044, § 715; Laws 2001, LB 667, § 34; Laws 2007, LB296, § 612.
Operative date July 1, 2007.

71-5305.01 Certain new water systems; technical, managerial, and financial capacity. All new community water systems and new nontransient noncommunity water systems commencing operation after October 1, 1999, shall demonstrate technical, managerial, and financial capacity to operate under the Nebraska Safe Drinking Water Act.

The director may adopt and promulgate rules and regulations to determine demonstration requirements for technical, managerial, and financial capacity of community water systems and nontransient noncommunity water systems.

Source: Laws 1997, LB 517, § 20; Laws 2007, LB296, § 613.
Operative date July 1, 2007.

71-5305.02 Capacity development strategy; department; solicit public comment. The department shall develop a capacity development strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity pursuant to section 71-5305.01. The department shall consider and solicit public comment on:

(1) The methods or criteria the department will use to identify and prioritize the public water systems most in need of improving technical, managerial, and financial capacity;

(2) A description of the institutional, regulatory, financial, tax, or legal factors at the federal, state, or local level that encourage or impair capacity development;

- (3) A description of how the department will:
- (a) Assist public water systems in complying with the Nebraska Safe Drinking Water Act;
 - (b) Encourage the development of partnerships between public water systems to enhance the technical, managerial, and financial capacity of the systems; and
 - (c) Assist public water systems in the training and licensure of operators; and
- (4) A description of how the department will establish a baseline and measure improvements in capacity with respect to the act.

Source: Laws 1997, LB 517, § 21; Laws 2001, LB 667, § 36; Laws 2007, LB296, § 614; Laws 2007, LB463, § 1225.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 614, with LB 463, section 1225, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-5306 Director; powers and authority; Safe Drinking Water Act Cash Fund; created; use; investment. (1) To carry out the provisions and purposes of the Nebraska Safe Drinking Water Act, the director may:

(a) Enter into agreements, contracts, or cooperative arrangements, under such terms as are deemed appropriate, with other state, federal, or interstate agencies or with municipalities, educational institutions, local health departments, or other organizations, entities, or individuals;

(b) Require all laboratory analyses to be performed at the Department of Health and Human Services Laboratory, or at any other certified laboratory which has entered into an agreement with the department therefor, and establish and collect fees for making laboratory analyses of water samples pursuant to sections 71-2619 to 71-2621, except that subsection (6) of section 71-2619 shall not apply for purposes of the Nebraska Safe Drinking Water Act. Inspection fees for making other laboratory agreements shall be established and collected pursuant to sections 71-2619 to 71-2621;

(c) Certify laboratories performing tests on water that is intended for human consumption. The director may establish, through rules and regulations, standards for certification. Such standards may include requirements for staffing, equipment, procedures, and methodology for conducting laboratory tests, quality assurance and quality control procedures, and communication of test results. Such standards shall be consistent with requirements for performing laboratory tests established by the federal Environmental Protection Agency to the extent such requirements are consistent with state law. The director may accept accreditation by a recognized independent accreditation body, public agency, or federal program which has standards that are at least as stringent as those established pursuant to this section. The director may adopt and promulgate rules and regulations which list accreditation bodies, public agencies, and federal programs that may be accepted as evidence that a laboratory meets the standards for certification. Inspection fees for certifying other laboratories shall be established and collected to defray the cost of the inspections;

(d) Receive financial and technical assistance from an agency of the federal government or from any other public or private agency;

(e) Enter the premises of a public water system at any time for the purpose of conducting monitoring, making inspections, or collecting water samples for analysis;

(f) Delegate those responsibilities and duties as deemed appropriate for the purpose of administering the requirements of the Nebraska Safe Drinking Water Act, including entering into agreements with designated agents which shall perform specifically delegated responsibilities and possess specifically delegated powers;

(g) Require the owner and operator of a public water system to establish and maintain records, make reports, and provide information as the department may reasonably require by regulation to enable it to determine whether such owner or operator has acted or is acting in compliance with the Nebraska Safe Drinking Water Act and rules and regulations adopted pursuant thereto. The department or its designated agent shall have access at all times to such records and reports; and

(h) Assess by regulation a fee for any review of plans and specifications pertaining to a public water system governed by section 71-5305 in order to defray no more than the actual cost of the services provided.

(2) All such fees collected by the department shall be remitted to the State Treasurer for credit to the Safe Drinking Water Act Cash Fund, which is hereby created. Such fund shall be used by the department for the purpose of administering the Nebraska Safe Drinking Water Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1976, LB 821, § 6; Laws 1986, LB 1047, § 7; Laws 1996, LB 1044, § 716; Laws 2000, LB 1115, § 78; Laws 2001, LB 667, § 37; Laws 2003, LB 242, § 130; Laws 2007, LB296, § 615.
Operative date July 1, 2007.

Cross Reference

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

71-5307 Operator of public water system; license required. No public water system shall be issued or otherwise hold a permit to operate a public water system, granted by the department, unless its operator possesses a license issued by the department.

Source: Laws 1976, LB 821, § 7; Laws 2001, LB 667, § 38; Laws 2007, LB463, § 1226.
Operative date December 1, 2008.

71-5308 License; application; issuance; disciplinary actions; grounds; existing certificate holder; how treated. Application for a license to act as a licensed operator of a public water system shall be made as provided in the Uniform Credentialing Act. The department shall establish and collect fees for licenses as provided in sections 38-151 to 38-157. An operator shall be licensed in the same manner as an individual under subsection (1) of section 38-121 and shall be subject to the reporting, investigatory, and disciplinary

provisions of sections 38-176 to 38-185, 38-1,106, 38-1,109 to 38-1,126, and 38-1,137 to 38-1,139. In addition to the grounds for disciplinary action found in the Uniform Credentialing Act, a license issued under the Nebraska Safe Drinking Water Act may be disciplined for any violation of the act or the rules and regulations adopted and promulgated under the act.

An individual holding a certificate as a certified operator of a public water system under the Nebraska Safe Drinking Water Act on December 1, 2008, shall be deemed to be holding a license under the Uniform Credentialing Act and the Nebraska Safe Drinking Water Act on such date. The certificate holder may continue to practice under such certificate as a license in accordance with such acts until the certificate would have expired under its terms.

Source: Laws 1976, LB 821, § 8; Laws 1997, LB 752, § 190; Laws 2001, LB 667, § 39; Laws 2002, LB 1021, § 90; Laws 2003, LB 242, § 131; Laws 2007, LB463, § 1227.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

71-5309 Qualifications of operators of public water system; license; rules and regulations. (1) The director shall adopt and promulgate minimum necessary rules and regulations governing the qualifications of operators of public water systems. In adopting such rules and regulations, the director shall give consideration to the levels of training and experience which are required, in the opinion of the director, to insure to the greatest extent possible that the public water systems shall be operated in such a manner that (a) maximum efficiency can be attained, (b) interruptions in service will not occur, (c) chemical treatment of the water will be adequate to maintain purity and safety, and (d) harmful materials will not enter the public water system.

(2) The director may require, by rule and regulation, that the applicant for a license successfully pass an examination on the subject of operation of a public water system. The rules and regulations, and any tests so administered, may set out different requirements for public water systems based on one or more of the following: Physical size of the facilities, number of persons served, system classification, source of water, treatment technique and purpose, and distribution complexity, so long as the criteria set forth in this section are followed.

Source: Laws 1976, LB 821, § 9; Laws 1988, LB 383, § 7; Laws 2001, LB 667, § 40; Laws 2003, LB 31, § 6; Laws 2007, LB463, § 1228.
Operative date December 1, 2008.

71-5310 Director; authorize variances or exemptions to standards; procedure. (1) The director, with the approval of the council, may authorize variances or exemptions from the drinking water standards issued pursuant to section 71-5302 under conditions and in such manner as they deem necessary and desirable. Such variances or exemptions shall be permitted under conditions and in a manner which are not less stringent than the conditions

under, and the manner in which, variances and exemptions may be granted under the federal Safe Drinking Water Act as the act existed on July 20, 2002.

(2) Prior to granting a variance or an exemption, the director shall provide notice, in a newspaper of general circulation serving the area served by the public water system, of the proposed exemption or variance and that interested persons may request a public hearing on the proposed exemption or variance. The director may require the system to provide other appropriate notice necessary to provide adequate notice to persons served by the system.

If a public hearing is requested, the director shall set a time and place for the hearing and such hearing shall be held before the department prior to the variance or exemption being issued. Frivolous and insubstantial requests for a hearing may be denied by the director. An exemption or variance shall be conditioned on monitoring, testing, analyzing, or other requirements to insure the protection of the public health. A variance or an exemption granted shall include a schedule of compliance under which the public water system is required to meet each contaminant level or treatment technique requirement for which a variance or an exemption is granted within a reasonable time as specified by the director with the approval of the council.

Source: Laws 1976, LB 821, § 10; Laws 1988, LB 383, § 8; Laws 1996, LB 1044, § 717; Laws 2001, LB 667, § 41; Laws 2002, LB 1062, § 54; Laws 2007, LB296, § 616.
Operative date July 1, 2007.

71-5310.01 Notice, order, or other instrument; service. Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the director under the Nebraska Safe Drinking Water Act may be served on any person affected by such notice, order, or other instrument, personally or by publication, and proof of such service may be made in like manner as in case of service of a summons in a civil action, such proof to be filed in the office of the department, or such service may be made by mailing a copy of the notice, order, or other instrument by certified or registered mail directed to the person affected at his or her last-known post office address as shown by the files or records of the department, and proof of service may be made by the affidavit of the person who did the mailing and filed in the office of the department.

Every certificate or affidavit of service made and filed as provided in this section shall be prima facie evidence of the facts stated in such certificate or affidavit, and a certified copy shall have like force and effect.

Source: Laws 1988, LB 383, § 9; Laws 1996, LB 1044, § 718; Laws 2007, LB296, § 617.
Operative date July 1, 2007.

71-5311 Advisory Council on Public Water Supply; established; duties; members; qualifications; terms; vacancy; meetings; officers; quorum; expenses. (1) There is hereby established the Advisory Council on Public Water Supply which shall advise and assist the department in administering the Nebraska Safe Drinking Water Act.

(2) The council shall be composed of seven members appointed by the Governor, (a) one of whom shall be a professional engineer, (b) one of whom shall be a licensed physician, (c) two

of whom shall be consumers of a public water system, (d) two of whom shall be operators of a public water system who possess a license issued by the department to operate a public water system. One such operator shall represent a system serving a population of five thousand or less, and one such operator shall represent a system serving a population of more than five thousand, and (e) one of whom shall be, at the time of appointment, (i) an individual who owns a public water system, (ii) a member of the governing board of a public or private corporation which owns a public water system, or (iii) in the case of a political subdivision which owns a public water system, a member of the subdivision's governing board or board of public works or similar board which oversees the operation of a public water system.

(3) All members shall be appointed for three-year terms. No member shall serve more than three consecutive three-year terms. Each member shall hold office until the expiration of his or her term or until a successor has been appointed. Any vacancy occurring in council membership, other than by expiration of term, shall be filled within sixty days by the Governor by appointment from the appropriate category for the unexpired term.

(4) The council shall meet not less than once each year. Special meetings of the council may be called by the director or upon the written request of any two members of the council explaining the reason for such meeting. The place of the meeting shall be set by the director. Such officers as the council deems necessary shall be elected every three years beginning with the first meeting in the year 1990. A majority of the members of the council shall constitute a quorum for the transaction of business. Representatives of the department shall attend each meeting. Every act of the majority of the members of the council shall be deemed to be the act of the council.

(5) No member of the council shall receive any compensation, but each member shall be entitled, while serving on the business of the council, to receive his or her travel and other necessary expenses while so serving away from his or her place of residence as provided in sections 81-1174 to 81-1177.

Source: Laws 1976, LB 821, § 11; Laws 1989, LB 344, § 32; Laws 1996, LB 1044, § 719; Laws 1997, LB 622, § 110; Laws 2001, LB 667, § 42; Laws 2007, LB296, § 618; Laws 2007, LB463, § 1229.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 618, with LB 463, section 1229, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-5311.02 Voluntary compliance. The director shall make every effort to obtain voluntary compliance through warning, conference, or any other appropriate means prior to initiating enforcement proceedings, except that such requirement shall not be construed to alter enforcement duties or requirements of the director and the department.

Source: Laws 1997, LB 517, § 23; Laws 2007, LB296, § 619.
Operative date July 1, 2007.

71-5312.01 Existing rules, regulations, certificates, forms of approval, suits, other proceedings; how treated. (1) All rules and regulations adopted prior to December 1, 2008, under the Nebraska Safe Drinking Water Act shall continue to be effective to the extent not in conflict with the changes made by Laws 2007, LB 463.

(2) All certificates or other forms of approval issued prior to December 1, 2008, in accordance with the Nebraska Safe Drinking Water Act shall remain valid as issued for purposes of the changes made by Laws 2007, LB 463, unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to December 1, 2008, under the Nebraska Safe Drinking Water Act shall be subject to the provisions of the act as they existed prior to December 1, 2008.

Source: Laws 2007, LB463, § 1230.
Operative date December 1, 2008.

71-5313 Act, how cited. Sections 71-5301 to 71-5313 shall be known and may be cited as the Nebraska Safe Drinking Water Act.

Source: Laws 1976, LB 821, § 13; Laws 1988, LB 383, § 10; Laws 1997, LB 517, § 24; Laws 2007, LB463, § 1231.
Operative date December 1, 2008.

(b) DRINKING WATER STATE REVOLVING FUND ACT

71-5318 Drinking Water Facilities Loan Fund; Land Acquisition and Source Water Loan Fund; Drinking Water Administration Fund; created; use; investment. (1) The Drinking Water Facilities Loan Fund is created. The fund shall be held as a trust fund for the purposes and uses described in the Drinking Water State Revolving Fund Act.

The fund shall consist of federal capitalization grants, state matching appropriations, proceeds of state match bond issues credited to the fund, repayments of principal and interest on loans, and other money designated for the fund. The director may make loans from the fund pursuant to the Drinking Water State Revolving Fund Act and may conduct activities related to financial administration of the fund, administration or provision of technical assistance through public water system source water assessment programs, and implementation of a source water petition program under the Safe Drinking Water Act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that any bond proceeds in the fund shall be invested in accordance with the terms of the documents under which the bonds are issued. The state investment officer may direct that the bond proceeds shall be deposited with the bond trustee for investment. Investment earnings shall be credited to the fund.

The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund and in providing for the security, investment, and repayment of bonds.

The fund and the assets thereof may be used, to the extent permitted by the Safe Drinking Water Act and the regulations adopted and promulgated pursuant to such act, to pay or to secure the payment of bonds and the interest thereon, except that amounts deposited into the fund from state appropriations and the earnings on such appropriations may not be used to pay or to secure the payment of bonds or the interest thereon.

(2) The Land Acquisition and Source Water Loan Fund is created. The fund shall be held as a trust for the purposes and uses described in the Drinking Water State Revolving Fund Act.

The fund shall consist of federal capitalization grants, state matching appropriations, proceeds of state match bond issues credited to the fund, repayments of principal and interest on loans, and other money designated for the fund. The director may make loans from the fund pursuant to the Drinking Water State Revolving Fund Act and may, in consultation with the Director of Public Health of the Division of Public Health, conduct activities other than the making of loans permitted under section 1452(k) of the Safe Drinking Water Act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that any bond proceeds in the fund shall be invested in accordance with the terms of the documents under which the bonds are issued. The state investment officer may direct that the bond proceeds shall be deposited with the bond trustee for investment. Investment earnings shall be credited to the fund.

The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund and in providing for security, investment, and repayment of bonds.

The fund and assets thereof may be used, to the extent permitted by the Safe Drinking Water Act and the regulations adopted and promulgated pursuant to such act, to pay or secure the payment of bonds and the interest thereon, except that amounts credited to the fund from state appropriations and the earnings on such appropriations may not be used to pay or to secure the payment of bonds or the interest thereon.

The director may transfer any money in the Land Acquisition and Source Water Loan Fund to the Drinking Water Facilities Loan Fund.

(3) There is hereby created the Drinking Water Administration Fund. Any funds available for administering loans or fees collected pursuant to the Drinking Water State Revolving Fund Act shall be remitted to the State Treasurer for credit to such fund. The fund shall be administered by the department for the purposes of the act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings shall be credited to the fund.

The fund and assets thereof may be used, to the extent permitted by the Safe Drinking Water Act and the regulations adopted and promulgated pursuant to such act, to fund subdivisions (9), (10), and (11) of section 71-5322. The annual obligation of the state pursuant

to subdivisions (9) and (11) of section 71-5322 shall not exceed sixty-five percent of the revenue from administrative fees collected pursuant to section 71-5321 in the prior fiscal year.

The director may transfer any money in the Drinking Water Administration Fund to the Drinking Water Facilities Loan Fund to meet the state matching appropriation requirements of any applicable federal capitalization grants or to meet the purposes of subdivision (9) of section 71-5322.

Source: Laws 1997, LB 517, § 7; Laws 2001, LB 667, § 46; Laws 2007, LB80, § 1; Laws 2007, LB296, § 620.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 80, section 1, with LB 296, section 620, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 80 became effective September 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.

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

71-5322 Department; powers and duties. The department shall have the following powers and duties:

(1) The power to establish a program to make loans to owners of public water systems, individually or jointly, for construction or modification of safe drinking water projects in accordance with the Drinking Water State Revolving Fund Act and the rules and regulations of the council adopted and promulgated pursuant to such act;

(2) The power, if so authorized by the council pursuant to section 71-5321, to execute and deliver documents obligating the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund and the assets thereof to the extent permitted by section 71-5318 to repay, with interest, loans to or credits into such funds and to execute and deliver documents pledging to the extent permitted by section 71-5318 all or part of such funds and assets to secure, directly or indirectly, the loans or credits;

(3) The duty to prepare an annual report for the Governor and the Legislature;

(4) The duty to establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods, including the following:

(a) Accounting from the Nebraska Investment Finance Authority for the costs associated with the issuance of bonds pursuant to the act;

(b) Accounting for payments or deposits received by the funds;

(c) Accounting for disbursements made by the funds; and

(d) Balancing the funds at the beginning and end of the accounting period;

(5) The duty to establish financial capability requirements that assure sufficient revenue to operate and maintain a facility for its useful life and to repay the loan for such facility;

(6) The power to determine the rate of interest to be charged on a loan in accordance with the rules and regulations adopted and promulgated by the council;

(7) The power to develop an intended use plan, in consultation with the Director of Public Health of the Division of Public Health, for adoption by the council;

(8) The power to enter into required agreements with the United States Environmental Protection Agency pursuant to the Safe Drinking Water Act;

(9) The power to enter into agreements for the purpose of providing loan forgiveness concurrent with loans to public water systems operated by political subdivisions with populations of ten thousand inhabitants or less which demonstrate serious financial hardships. The department may enter into agreements for up to one-half of the eligible project cost. Such agreements shall contain a provision that payment of the amount allocated is conditional upon the availability of appropriated funds;

(10) The power to provide emergency funding to public water systems operated by political subdivisions with drinking water facilities which have been damaged or destroyed by natural disaster or other unanticipated actions or circumstances. Such funding shall not be used for routine repair or maintenance of facilities;

(11) The power to provide financial assistance consistent with the intended use plan, described in subdivision (7) of this section, for completion of engineering studies, research projects to investigate low-cost options for achieving compliance with safe drinking water standards, preliminary engineering reports, regional water system planning, source water protection, and other studies for the purpose of enhancing the ability of communities to meet the requirements of the Safe Drinking Water Act, to public water systems operated by political subdivisions with populations of ten thousand inhabitants or less which demonstrate serious financial hardships. The department may enter into agreements for up to ninety percent of the eligible project cost. Such agreements shall contain a provision that payment of the amount obligated is conditional upon the availability of appropriated funds; and

(12) Such other powers as may be necessary and appropriate for the exercise of the duties created under the Drinking Water State Revolving Fund Act.

Source: Laws 1997, LB 517, § 11; Laws 2001, LB 667, § 47; Laws 2007, LB80, § 2; Laws 2007, LB296, § 621.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 80, section 2, with LB 296, section 621, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 80 became effective September 1, 2007.

ARTICLE 54

DRUG PRODUCT SELECTION

Section.

71-5402. Terms, defined.

71-5403. Drug product selection; when.

71-5402 Terms, defined. For purposes of the Nebraska Drug Product Selection Act, unless the context otherwise requires:

(1) Bioequivalent means drug products: (a) That are legally marketed under regulations promulgated by the federal Food and Drug Administration; (b) that are the same dosage form of the identical active ingredients in the identical amounts as the drug product prescribed; (c) that comply with compendial standards and are consistent from lot to lot with respect to (i) purity of ingredients, (ii) weight variation, (iii) uniformity of content, and (iv) stability; and (d) for which the federal Food and Drug Administration has established bioequivalent standards or has determined that no bioequivalence problems exist;

(2) Board means the Board of Pharmacy;

(3) Brand name means the proprietary or trade name selected by the manufacturer, distributor, or packager for a drug product and placed upon the labeling of such product at the time of packaging;

(4) Chemically equivalent means drug products that contain amounts of the identical therapeutically active ingredients in the identical strength, quantity, and dosage form and that meet present compendial standards;

(5) Department means the Department of Health and Human Services;

(6) Drug product means any drug or device as defined in section 38-2841;

(7) Drug product select means to dispense, without the practitioner's express authorization, an equivalent drug product in place of the brand-name drug product contained in a medical order of such practitioner;

(8) Equivalent means drug products that are both chemically equivalent and bioequivalent;

(9) Generic name means the official title of a drug or drug combination as determined by the United States Adopted Names Council and accepted by the federal Food and Drug Administration of those drug products having the same active chemical ingredients in the same strength and quantity;

(10) Medical order has the definition found in section 38-2828;

(11) Pharmacist means a pharmacist licensed under the Pharmacy Practice Act; and

(12) Practitioner has the definition found in section 38-2838.

Source: Laws 1977, LB 103, § 2; Laws 1983, LB 476, § 21; Laws 1989, LB 342, § 36; Laws 1996, LB 1044, § 720; Laws 1998, LB 1073, § 148; Laws 2001, LB 398, § 76; Laws 2003, LB 667, § 15; Laws 2005, LB 382, § 11; Laws 2007, LB296, § 622; Laws 2007, LB463, § 1232.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 622, with LB 463, section 1232, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Pharmacy Practice Act, see section 38-2801.

71-5403 Drug product selection; when. (1) A pharmacist may drug product select except when:

(a) A practitioner designates that drug product selection is not permitted by specifying on the face of the prescription or by telephonic, facsimile, or electronic transmission that there shall be no drug product selection. For written prescriptions, the practitioner shall

specify in his or her own handwriting on the prescription the phrase "no drug product selection", "dispense as written", "brand medically necessary", or "no generic substitution" or the notation "N.D.P.S.", "D.A.W.", or "B.M.N." or words or notations of similar import to indicate that drug product selection is not permitted. The pharmacist shall note "N.D.P.S.", "D.A.W.", "B.M.N.", "no drug product selection", "dispense as written", "brand medically necessary", "no generic substitution", or words or notations of similar import on the face of the prescription to indicate that drug product selection is not permitted if such is communicated orally by the prescribing practitioner; or

(b) A patient or designated representative or caregiver of such patient instructs otherwise.

(2) A pharmacist shall not drug product select a drug product unless:

(a) The drug product, if it is in solid dosage form, has been marked with an identification code or monogram directly on the dosage unit;

(b) The drug product has been labeled with an expiration date;

(c) The manufacturer, distributor, or packager of the drug product provides reasonable services, as determined by the board, to accept the return of drug products that have reached their expiration date; and

(d) The manufacturer, distributor, or packager maintains procedures for the recall of unsafe or defective drug products.

Source: Laws 1977, LB 103, § 3; Laws 1978, LB 689, § 2; Laws 1983, LB 476, § 22; Laws 1989, LB 353, § 1; Laws 1991, LB 363, § 1; Laws 1998, LB 1073, § 149; Laws 1999, LB 828, § 174; Laws 2003, LB 667, § 16; Laws 2005, LB 382, § 12; Laws 2007, LB247, § 54.
Operative date June 1, 2007.

ARTICLE 56

RURAL HEALTH

(c) OFFICE OF RURAL HEALTH

Section.

71-5647. Office of Rural Health; created; powers and duties.

71-5649. Legislative appropriation.

(d) RURAL HEALTH SYSTEMS AND PROFESSIONAL INCENTIVE ACT

71-5653. Terms, defined.

71-5654. Nebraska Rural Health Advisory Commission; created; members; appointment; terms.

71-5655. Commission; purpose.

71-5662. Student loan; loan repayment; eligibility.

71-5666. Student loan recipient agreement; contents.

71-5667. Agreements under prior law; renegotiation.

(f) RURAL BEHAVIORAL HEALTH TRAINING AND PLACEMENT PROGRAM ACT 71-5681. Legislative findings and declarations.

(c) OFFICE OF RURAL HEALTH

71-5647 Office of Rural Health; created; powers and duties. The Office of Rural Health is hereby created within the Department of Health and Human Services. The office shall have the following powers and duties:

(1) To assist rural residents in obtaining high quality health care which includes the following:

(a) Assist in the recruitment and retention of health care professionals to rural areas, including specifically physicians and nurses;

(b) Assist rural communities in maintaining the viability of hospital services whenever feasible or, for communities in transition, in developing alternative systems to provide equivalent quality care to their residents;

(c) Assist rural communities in planning to meet changes needed due to the changing rural economy and demographics or new technology;

(d) Assist in the development of health care networks or cooperative ventures among rural communities or health care providers;

(e) Assist in promoting or developing demonstration projects to identify and establish alternative health care systems; and

(f) Assist rural communities in developing and identifying leaders and leadership skills among their residents to enable such communities to work toward appropriate and cost-effective solutions to the health care issues that confront them;

(2) To develop a comprehensive rural health policy to serve as a guide for the development of programs of the department aimed at improving health care in rural Nebraska and a rural health action plan to guide implementation of the policy;

(3) To establish liaison with other state agency efforts in the area of rural development and human services delivery to ensure that the programs of the office are appropriately coordinated with these efforts and to encourage use of the comprehensive rural health policy by other agencies as a guide to their plans and programs affecting rural health;

(4) To develop and maintain an appropriate data system to identify present and potential rural health issues and to evaluate the effectiveness of programs and demonstration projects;

(5) To encourage and facilitate increased public awareness of issues affecting rural health care;

(6) To carry out its duties under the Rural Health Systems and Professional Incentive Act;

(7) To carry out the duties required by section 71-5206.01; and

(8) To carry out related duties as directed by the Department of Health and Human Services.

Source: Laws 1990, LB 994, § 2; Laws 1991, LB 400, § 23; Laws 1993, LB 152, § 5; Laws 1996, LB 1044, § 725; Laws 1998, LB 1073, § 151; Laws 2005, LB 301, § 52; Laws 2007, LB296, § 623.
Operative date July 1, 2007.

Cross Reference

Rural Health Systems and Professional Incentive Act, see section 71-5650.

71-5649 Legislative appropriation. The Legislature shall appropriate sufficient funds to the Department of Health and Human Services to enable the Office of Rural Health to carry out its duties pursuant to section 71-5647.

Source: Laws 1990, LB 994, § 4; Laws 1991, LB 400, § 24; Laws 1996, LB 1044, § 726; Laws 1998, LB 1073, § 152; Laws 2005, LB 301, § 53; Laws 2007, LB296, § 624.
Operative date July 1, 2007.

(d) RURAL HEALTH SYSTEMS AND PROFESSIONAL INCENTIVE ACT

71-5653 Terms, defined. For purposes of the Rural Health Systems and Professional Incentive Act:

(1) Approved medical specialty means family practice, general practice, general internal medicine, general pediatrics, general surgery, obstetrics/gynecology, and psychiatry;

(2) Approved dental specialty means general practice, pediatric dentistry, and oral surgery;

(3) Approved mental health practice program means an approved educational program consisting of a master's or doctorate degree with the focus being primarily therapeutic mental health and meeting the educational requirements for licensure in mental health practice or psychology by the department;

(4) Commission means the Nebraska Rural Health Advisory Commission;

(5) Department means the Division of Public Health of the Department of Health and Human Services;

(6) Doctorate-level mental health student means a graduate student enrolled in or accepted for enrollment in an approved mental health practice program leading to a doctorate degree and meeting the educational requirements for licensure in psychology by the department;

(7) Full-time practice means a minimum of forty hours per week;

(8) Health care means both somatic and mental health care services;

(9) Master's level mental health student means a graduate student enrolled in or accepted for enrollment in an approved mental health practice program leading to a master's degree and meeting the educational requirements for licensure in mental health practice by the department;

(10) Office means the Office of Rural Health;

(11) Qualified educational debts means government and commercial loans obtained by students for postsecondary education tuition, other educational expenses, and reasonable living expenses, as determined by the department, but does not include loans received under the act or the Nebraska Medical Student Assistance Act; and

(12) Rural means located within any county in Nebraska having a population of less than fifteen thousand inhabitants and not included within a metropolitan statistical area as defined by the United States Department of Commerce, Bureau of the Census.

Source: Laws 1991, LB 400, § 4; Laws 1992, LB 573, § 10; Laws 1994, LB 1223, § 56; Laws 1996, LB 1044, § 727; Laws 1996, LB 1155, § 48; Laws 1998, LB 1073, § 153; Laws 2000, LB 1115, § 80; Laws 2004, LB 1005, § 101; Laws 2005, LB 301, § 54; Laws 2007, LB296, § 625.
Operative date July 1, 2007.

Note: The Nebraska Medical Student Assistance Act, sections 71-5613 to 71-5645, was repealed by Laws 1991, LB 400, § 26.

71-5654 Nebraska Rural Health Advisory Commission; created; members; appointment; terms. The Nebraska Rural Health Advisory Commission is hereby created as the direct and only successor to the Commission on Rural Health Manpower. The Nebraska Rural Health Advisory Commission shall consist of thirteen members as follows:

(1) The Director of Public Health of the Division of Public Health or his or her designee and another representative of the Department of Health and Human Services; and

(2) Eleven members to be appointed by the Governor with the advice and consent of the Legislature as follows:

(a) One representative of each medical school located in the state involved in training family physicians and one physician in family practice residency training; and

(b) From rural areas one physician, one consumer representative, one hospital administrator, one nursing home administrator, one nurse, one physician assistant, one mental health practitioner or psychologist licensed under the requirements of section 38-3114 or the equivalent thereof, and one dentist.

Members shall serve for terms of three years. When a vacancy occurs, appointment to fill the vacancy shall be made for the balance of the term. All appointed members shall be citizens and residents of Nebraska. The appointed membership of the commission shall, to the extent possible, represent the three congressional districts equally.

Source: Laws 1991, LB 400, § 5; Laws 1996, LB 1044, § 728; Laws 1996, LB 1155, § 49; Laws 1997, LB 577, § 1; Laws 2001, LB 411, § 1; Laws 2004, LB 1005, § 102; Laws 2007, LB296, § 626; Laws 2007, LB463, § 1233.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 626, with LB 463, section 1233, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-5655 Commission; purpose. The purpose of the commission shall be to advise the department, the Legislature, the Governor, the University of Nebraska, and the citizens of Nebraska regarding all aspects of rural health care and to advise the office regarding the administration of the Rural Health Systems and Professional Incentive Act.

Source: Laws 1991, LB 400, § 6; Laws 1996, LB 1044, § 729; Laws 1998, LB 1073, § 154; Laws 2005, LB 301, § 55; Laws 2007, LB296, § 627.
Operative date July 1, 2007.

71-5662 Student loan; loan repayment; eligibility. (1) To be eligible for a student loan under the Rural Health Systems and Professional Incentive Act, an applicant or a recipient shall be enrolled or accepted for enrollment in an accredited medical or dental

education program or physician assistant education program or an approved mental health practice program in Nebraska.

(2) To be eligible for loan repayment under the act, an applicant or a recipient shall be a pharmacist, a dentist, a physical therapist, an occupational therapist, a mental health practitioner, a psychologist licensed under the requirements of section 38-3114 or the equivalent thereof, an advanced practice registered nurse, a physician assistant, or a physician in an approved specialty and shall be licensed to practice in Nebraska, not be enrolled in a residency program, not be practicing under a provisional or temporary license, and enter practice in a designated health profession shortage area in Nebraska.

Source: Laws 1991, LB 400, § 13; Laws 1994, LB 1223, § 59; Laws 1996, LB 1155, § 51; Laws 1997, LB 577, § 2; Laws 2000, LB 1115, § 81; Laws 2004, LB 1005, § 104; Laws 2007, LB463, § 1234. Operative date December 1, 2008.

71-5666 Student loan recipient agreement; contents. Each student loan recipient shall execute an agreement with the state. Such agreement shall include the following terms, as appropriate:

(1) The borrower agrees to practice the equivalent of one year of full-time practice of an approved specialty in a designated health profession shortage area in Nebraska for each year of education for which a loan is received and agrees to accept medicaid patients in his or her practice;

(2) If the borrower practices an approved specialty in a designated health profession shortage area in Nebraska, the loan shall be forgiven as provided in this section. Practice in a designated area shall commence within three months of the completion of formal education, which may include a period not to exceed five years to complete specialty training in an approved specialty. The commission may approve exceptions to the three-month restriction upon showing good cause. Loan forgiveness shall occur on a quarterly basis, with completion of the equivalent of three months of full-time practice resulting in the cancellation of one-fourth of the annual loan amount;

(3) If the borrower practices an approved specialty in Nebraska but not in a designated health profession shortage area, practices a specialty other than an approved specialty in Nebraska, or practices outside Nebraska, the borrower shall repay one hundred fifty percent of the outstanding loan principal with interest at a rate of eight percent simple interest per year from the date of default. Such repayment shall commence within six months of the completion of formal education, which may include a period not to exceed five years to complete specialty training in an approved specialty, and shall be completed within a period not to exceed twice the number of years for which loans were awarded;

(4) If a borrower who is a medical, dental, or doctorate-level mental health student determines during the first or second year of medical, dental, or doctorate-level mental health education that his or her commitment to the loan program cannot be honored, the borrower may repay the outstanding loan principal, plus six percent simple interest per year from the date the loan was granted, prior to graduation from medical or dental school or a mental

health practice program without further penalty or obligation. Master's level mental health and physician assistant student loan recipients shall not be eligible for this provision;

(5) If the borrower discontinues the course of study for which the loan was granted, the borrower shall repay one hundred percent of the outstanding loan principal. Such repayment shall commence within six months of the date of discontinuation of the course of study and shall be completed within a period of time not to exceed the number of years for which loans were awarded; and

(6) In the event of a borrower's total and permanent disability or death, the unpaid debt accrued under the Rural Health Systems and Professional Incentive Act shall be canceled.

Source: Laws 1991, LB 400, § 17; Laws 1994, LB 1223, § 63; Laws 1996, LB 1155, § 54; Laws 2001, LB 214, § 4; Laws 2004, LB 1005, § 107; Laws 2007, LB374, § 1.
Operative date July 1, 2007.

71-5667 Agreements under prior law; renegotiation. Loan agreements executed prior to July 1, 2007, under the Nebraska Medical Student Assistance Act or the Rural Health Systems and Professional Incentive Act may be renegotiated and new agreements executed to reflect the terms required by section 71-5666. No funds repaid by borrowers under the terms of agreements executed prior to July 1, 2007, shall be refunded. Any repayments being made under the terms of prior agreements may be discontinued upon execution of a new agreement if conditions permit.

Source: Laws 1991, LB 400, § 18; Laws 1996, LB 1155, § 55; Laws 2007, LB374, § 2.
Operative date July 1, 2007.

Note: The Nebraska Medical Student Assistance Act, sections 71-5613 to 71-5645, was repealed by Laws 1991, LB 400, § 26.

(f) RURAL BEHAVIORAL HEALTH TRAINING AND PLACEMENT PROGRAM ACT

71-5681 Legislative findings and declarations. The Legislature hereby finds and declares that:

(1) Eighty-eight of Nebraska's ninety-three counties are classified as mental and behavioral health profession shortage areas by the federal Health Resources and Services Administration and the Nebraska Department of Health and Human Services;

(2) The Department of Health and Human Services reports that seventy-four percent of the state's psychiatrists, psychologists, and licensed mental health practitioners live and practice in the urban areas of Omaha and Lincoln, which leaves the remaining seventy-two thousand square miles of Nebraska to be covered by approximately one-fourth of the professionals licensed to practice behavioral health in Nebraska;

(3) Thirty-eight Nebraska counties have one or no licensed behavioral health professional; and

(4) Reductions in federal funding will result in the elimination of over five thousand five hundred behavioral health patient visits in rural Nebraska.

Source: Laws 2006, LB 994, § 39; Laws 2007, LB296, § 628.
Operative date July 1, 2007.

ARTICLE 57

SMOKING AND TOBACCO

(a) NEBRASKA CLEAN INDOOR AIR ACT

Section.

- 71-5707. Smoking; designated areas; exceptions.
- 71-5710. Department of Health and Human Services; rules and regulations.
- 71-5711. Department of Health and Human Services; waiver of requirements; when.
- 71-5713. Violation; action to enjoin; report.

(b) TOBACCO PREVENTION AND CONTROL CASH FUND

- 71-5714. Tobacco Prevention and Control Cash Fund; created; use; investment.

(a) NEBRASKA CLEAN INDOOR AIR ACT

71-5707 Smoking; designated areas; exceptions. (1) No person shall smoke in a public place or at a public meeting except in designated smoking areas. This subsection does not apply in cases in which an entire room or hall is used for a private social function and seating arrangements are under the control of the sponsor of the function and not of the proprietor or person in charge of such room or hall.

(2) With respect to factories, warehouses, and similar places of work not usually frequented by the general public, the Department of Health and Human Services shall, in consultation with the Department of Labor, establish rules to restrict or prohibit smoking in those places of work where the close proximity of workers or the inadequacy of ventilation causes smoke pollution detrimental to the health and comfort of nonsmoking employees.

(3) No person shall smoke at a site where child care programs required to be licensed under section 71-1911 are provided. This subsection applies to a child care program located in the home of the provider only during times one or more client's children are present in any part of the home.

(4) Smoking is prohibited in all vehicles owned or leased by the state and in all buildings, and the area within ten feet of any entrance of such buildings, which are owned, leased, or occupied by the state except as provided in subsections (5), (6), and (7) of this section.

(5) The following buildings or areas within buildings in which persons reside or lodge may be exempt from this section: (a) Nebraska veterans homes established pursuant to section 80-315; (b) private residences; (c) facilities and institutions under the control of the Department of Health and Human Services; and (d) overnight lodging facilities and buildings managed by the Game and Parks Commission, but no more than twenty-five percent of the overnight lodging facilities at each park location shall permit smoking.

(6) Designated smoking areas not to exceed fifty percent of the space used by the public may be established in state-owned buildings at the Nebraska State Fairgrounds that possess

a Class C, I, or M license for the sale of alcoholic liquor for consumption on the premises under the Nebraska Liquor Control Act.

(7) Smoking may be permitted in no more than forty percent of the residential housing rooms or units owned or leased on each campus under the control of the Board of Regents of the University of Nebraska or the Board of Trustees of the Nebraska State Colleges.

Source: Laws 1979, LB 344, § 7; Laws 1996, LB 1044, § 732; Laws 1999, LB 211, § 1; Laws 2000, LB 1115, § 85; Laws 2004, LB 1005, § 109; Laws 2007, LB296, § 629.
Operative date July 1, 2007.

Cross Reference

Nebraska Liquor Control Act, see section 53-101.

Violation of section, penalty, see section 71-5712.

71-5710 Department of Health and Human Services; rules and regulations. The Department of Health and Human Services shall adopt and promulgate rules and regulations necessary and reasonable to implement the provisions of sections 71-5701 to 71-5713. The department shall consult with interested persons and professional organizations before promulgating such rules and regulations.

Source: Laws 1979, LB 344, § 10; Laws 1996, LB 1044, § 733; Laws 2007, LB296, § 630.
Operative date July 1, 2007.

71-5711 Department of Health and Human Services; waiver of requirements; when. The Department of Health and Human Services may, upon request, waive the provisions of sections 71-5701 to 71-5713 if it determines there are compelling reasons to do so and a waiver will not significantly affect the health and comfort of nonsmokers.

Source: Laws 1979, LB 344, § 11; Laws 1996, LB 1044, § 734; Laws 2007, LB296, § 631.
Operative date July 1, 2007.

71-5713 Violation; action to enjoin; report. The Department of Health and Human Services or a local public health department as defined in section 71-1626 may institute an action in any court with jurisdiction to enjoin any violation of the Nebraska Clean Indoor Air Act. Any interested party may report possible violations of the act to such departments.

Source: Laws 1979, LB 344, § 13; Laws 1996, LB 1044, § 735; Laws 2003, LB 45, § 2; Laws 2007, LB296, § 632.
Operative date July 1, 2007.

(b) TOBACCO PREVENTION AND CONTROL CASH FUND

71-5714 Tobacco Prevention and Control Cash Fund; created; use; investment. The Tobacco Prevention and Control Cash Fund is created. The fund shall be used for a comprehensive statewide tobacco-related public health program administered by the Department of Health and Human Services which includes, but is not limited to (1) community programs to reduce tobacco use, (2) chronic disease programs, (3) school programs, (4) statewide programs, (5) enforcement, (6) counter marketing, (7) cessation programs, (8) surveillance and evaluation, and (9) administration. Any money in the Tobacco

Prevention and Control Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2000, LB 1436, § 3; Laws 2002, LB 1310, § 8; Laws 2003, LB 412, § 3; Laws 2005, LB 301, § 56; Laws 2007, LB296, § 633.
Operative date July 1, 2007.

Cross Reference

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

ARTICLE 58

HEALTH CARE; CERTIFICATE OF NEED

Section.

71-5803.04. Department, defined.

71-5829.05. Long-term care beds; certificate of need; issuance; conditions.

71-5859. Department; decision; appeal procedures.

71-5803.04 Department, defined. Department means the Department of Health and Human Services.

Source: Laws 1979, LB 172, § 8; Laws 1996, LB 1044, § 736; R.S.1943, (1996), § 71-5808; Laws 1997, LB 798, § 8; Laws 2007, LB296, § 634.
Operative date July 1, 2007.

71-5829.05 Long-term care beds; certificate of need; issuance; conditions. If two or more applications are submitted within thirty days after the receipt of the first application for the same health planning region and the approval of all the applications would result in long-term care beds in the health planning region in excess of the long-term care bed need established in section 71-5829.04, the department shall grant the application and issue a certificate of need, subject to any reduction in beds required by section 71-5846 to the applicant which is better able to: (1) Provide quality care; (2) operate a long-term care facility in a cost-effective manner based on annual cost reports submitted to the department; (3) accumulate financial resources to complete the project; and (4) serve medicare, medicaid, and medically indigent long-term care patients in the area. The department shall show a preference to an application filed by an applicant with facilities in Nebraska. Information to make these determinations shall be limited to the application and data currently collected by the state. If the applicant does not have a facility in Nebraska, the department may request information from other states in which the applicant is offering services to make its determination.

Source: Laws 1997, LB 798, § 24; Laws 2007, LB296, § 635.
Operative date July 1, 2007.

71-5859 Department; decision; appeal procedures. The department shall adopt and promulgate rules and regulations establishing procedures in accordance with the Administrative Procedure Act by which the applicant may appeal a decision by the department. The applicant may appeal a final decision of the department to the district court in accordance with the Administrative Procedure Act.

Source: Laws 1979, LB 172, § 59; Laws 1982, LB 378, § 49; Laws 1989, LB 429, § 31; Laws 1997, LB 798, § 32; Laws 2007, LB296, § 636.
Operative date July 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

ARTICLE 59

ASSISTED-LIVING FACILITY ACT

Section.

71-5903. Terms, defined.

71-5903 Terms, defined. For purposes of the Assisted-Living Facility Act:

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

(2) Administrator means the operating officer of an assisted-living facility and includes a person with a title such as administrator, chief executive officer, manager, superintendent, director, or other similar designation;

(3) Assisted-living facility has the same meaning as in section 71-406;

(4) Authorized representative means (a) a person holding a durable power of attorney for health care, (b) a guardian, or (c) a person appointed by a court to manage the personal affairs of a resident of an assisted-living facility other than the facility;

(5) Chemical restraint means a psychopharmacologic drug that is used for discipline or convenience and is not required to treat medical symptoms;

(6) Complex nursing interventions means interventions which require nursing judgment to safely alter standard procedures in accordance with the needs of the resident, which require nursing judgment to determine how to proceed from one step to the next, or which require a multidimensional application of the nursing process. Complex nursing interventions does not include a nursing assessment;

(7) Department means the Department of Health and Human Services;

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

(9) Personal care means bathing, hair care, nail care, shaving, dressing, oral care, and similar activities;

(10) Physical restraint means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that he or she cannot remove easily and that restricts freedom of movement or normal access to his or her own body; and

(11) Stable or predictable means that a resident's clinical and behavioral status and nursing care needs are determined to be (a) nonfluctuating and consistent or (b) fluctuating in an expected manner with planned interventions, including an expected deteriorating condition.

Source: Laws 1997, LB 608, § 13; R.S.Supp.,1998, § 71-20,115; Laws 2000, LB 819, § 60; R.S.1943, (2003), § 71-460; Laws 2004, LB 1005, § 47; Laws 2007, LB296, § 637.
Operative date July 1, 2007.

ARTICLE 60

NURSING HOMES

(b) NEBRASKA NURSING HOME ACT

Section.

- 71-6010. Department, defined.
- 71-6011. Repealed. Laws 2007, LB 296, § 815.
- 71-6018.01. Nursing facility; nursing requirements; waiver; procedure.
- 71-6019. Access to residents; when permitted.
- 71-6021. Administrator refuse access; hearing; procedure; access authorized.

(c) TRAINING REQUIREMENTS

- 71-6038. Terms, defined.
- 71-6039. Nursing assistant; qualifications; training requirements; department; duties; licensure as nurse; effect.
- 71-6039.06. Eligibility for Licensee Assistance Program.
- 71-6040. Department; approve programs and materials.
- 71-6041. Department; adopt rules and regulations.
- 71-6042. Chief medical officer; enforcement; powers.

(d) NURSING HOME ADVISORY COUNCIL

- 71-6043. Terms, defined.
- 71-6045. Council; members; qualifications.
- 71-6048. Council; meetings; chairperson; secretary.

(e) NURSING HOME ADMINISTRATION

- 71-6053. Terms, defined.
- 71-6054. Transferred to section 38-2419.
- 71-6055. Transferred to section 38-2420.
- 71-6056. Transferred to section 38-2421.
- 71-6057. Repealed. Laws 2007, LB 463, § 1319.
- 71-6058. Transferred to section 38-2422.

- 71-6059. License; form; display.
- 71-6060. Transferred to section 38-2424.
- 71-6061. Repealed. Laws 2007, LB 463, § 1319.
- 71-6062. Transferred to section 38-2418.
- 71-6063. Transferred to section 38-2423.
- 71-6064. Repealed. Laws 2007, LB 463, § 1319.
- 71-6065. Board of Examiners in Nursing Home Administration; created; members; appointment; terms; removal; conflicts of interest.
- 71-6066. Repealed. Laws 2007, LB 463, § 1319.
- 71-6067. Repealed. Laws 2007, LB 463, § 1319.
- 71-6068. Nursing home; loss of certification or license; administrator's license; hearing; when.

(b) NEBRASKA NURSING HOME ACT

71-6010 Department, defined. Department shall mean the Department of Health and Human Services.

Source: Laws 1983, LB 235, § 3; Laws 1996, LB 1044, § 745; Laws 2007, LB296, § 638.
Operative date July 1, 2007.

71-6011 Repealed. Laws 2007, LB 296, § 815.

71-6018.01 Nursing facility; nursing requirements; waiver; procedure. (1) Unless a waiver is granted pursuant to subsection (2) of this section, a nursing facility shall use the services of (a) a licensed registered nurse for at least eight consecutive hours per day, seven days per week and (b) a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week. Except when waived under subsection (2) of this section, a nursing facility shall designate a licensed registered nurse or licensed practical nurse to serve as a charge nurse on each tour of duty. The Director of Nursing Services shall be a licensed registered nurse, and this requirement shall not be waived. The Director of Nursing Services may serve as a charge nurse only when the nursing facility has an average daily occupancy of sixty or fewer residents.

(2) The department may waive either the requirement that a nursing facility or long-term care hospital certified under Title XIX of the federal Social Security Act, as amended, use the services of a licensed registered nurse for at least eight consecutive hours per day, seven days per week, or the requirement that a nursing facility or long-term care hospital certified under Title XIX of the federal Social Security Act, as amended, use the services of a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week, including the requirement for a charge nurse on each tour of duty, if:

(a)(i) The facility or hospital demonstrates to the satisfaction of the department that it has been unable, despite diligent efforts, including offering wages at the community prevailing rate for the facilities or hospitals, to recruit appropriate personnel;

(ii) The department determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility or hospital; and

(iii) The department finds that, for any periods in which licensed nursing services are not available, a licensed registered nurse or physician is obligated to respond immediately to telephone calls from the facility or hospital; or

(b) The department has been granted any waiver by the federal government of staffing standards for certification under Title XIX of the federal Social Security Act, as amended, and the requirements of subdivisions (a)(ii) and (iii) of this subsection have been met.

(3) The department shall apply for such a waiver from the federal government to carry out subdivision (1)(b) of this section.

(4) A waiver granted under this section shall be subject to annual review by the department. As a condition of granting or renewing a waiver, a facility or hospital may be required to employ other qualified licensed personnel. The department may grant a waiver under this section if it determines that the waiver will not cause the State of Nebraska to fail to comply with any of the applicable requirements of medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

(5) The department shall provide notice of the granting of a waiver to the office of the state long-term care ombudsman and to the Nebraska Advocacy Services or any successor designated for the protection of and advocacy for persons with mental illness or mental retardation. A nursing facility granted a waiver shall provide written notification to each resident of the facility or, if appropriate, to the guardian, legal representative, or immediate family of the resident.

Source: Laws 2000, LB 819, § 126; Laws 2007, LB296, § 639.
Operative date July 1, 2007.

71-6019 Access to residents; when permitted. Any employee, representative, or agent of the department, the office of the state long-term care ombudsman, a law enforcement agency, or the local county attorney shall be permitted access at any hour to any resident of any nursing home. Friends and relatives of a resident shall have access during normal visiting and business hours of the facility. Representatives of community legal services programs, volunteers, and members of community organizations shall have access, after making arrangements with proper personnel of the home, during regular visiting and business hours if the purpose of such access is to:

- (1) Visit, talk with, and make personal, social, and legal services available to all residents;
- (2) Inform residents of their rights and entitlements and their corresponding obligations under federal and state laws by means of educational materials and discussions in groups and with individual residents;
- (3) Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance, and social security benefits, as well as in all other matters in which residents are aggrieved. Assistance may include counseling and litigation; or
- (4) Engage in other methods of asserting, advising, and representing residents so as to extend to them full enjoyment of their rights.

Source: Laws 1983, LB 235, § 12; Laws 1992, LB 677, § 32; Laws 1996, LB 1044, § 747; Laws 2007, LB296, § 640.
Operative date July 1, 2007.

71-6021 Administrator refuse access; hearing; procedure; access authorized. (1) Notwithstanding the provisions of sections 71-6019 and 71-6020, the administrator of a nursing home may refuse access to the nursing home to any person if the presence of such person in the nursing home would be injurious to the health and safety of a resident or would threaten the security of the property of a resident or the nursing home or if the person seeks access to the nursing home for commercial purposes. Any person refused access to a nursing home may, within thirty days of such refusal, request a hearing by the department. The wrongful refusal of a nursing home to grant access to any person as required in sections 71-6019 and 71-6020 shall constitute a violation of the Nebraska Nursing Home Act. A nursing home may appeal any citation issued pursuant to this section in the manner provided in sections 71-452 to 71-455.

(2) Nothing in sections 71-6019 to 71-6021 shall be construed to prevent (a) an employee of the department, acting in his or her official capacity, from entering a nursing home for any inspection authorized by the act or any rule or regulation adopted and promulgated pursuant thereto or (b) a state long-term care ombudsman or an ombudsman advocate, acting in his or her official capacity, from entering a nursing home to conduct an investigation authorized by any rules and regulations promulgated by the department.

Source: Laws 1983, LB 235, § 14; Laws 1992, LB 677, § 33; Laws 1996, LB 1044, § 748; Laws 2000, LB 819, § 124; Laws 2007, LB296, § 641.
Operative date July 1, 2007.

(c) TRAINING REQUIREMENTS

71-6038 Terms, defined. For purposes of sections 71-6038 to 71-6042:

(1) Complicated feeding problems include, but are not limited to, difficulty swallowing, recurrent lung aspirations, and tube or parenteral or intravenous feedings;

(2) Department means the Department of Health and Human Services;

(3) Nursing assistant means any person employed by a nursing home for the purpose of aiding a licensed registered or practical nurse through the performance of nonspecialized tasks related to the personal care and comfort of residents other than a paid dining assistant or a licensed registered or practical nurse;

(4) Nursing home means any facility or a distinct part of any facility that provides care as defined in sections 71-420, 71-421, 71-422, 71-424, and 71-429; and

(5) Paid dining assistant means any person employed by a nursing home for the purpose of aiding a licensed registered or practical nurse through the feeding of residents other than a nursing assistant or a licensed registered or practical nurse.

Source: Laws 1983, LB 273, § 1; Laws 1984, LB 416, § 10; Laws 1988, LB 190, § 4; Laws 1990, LB 1080, § 6; Laws 1994, LB 1210, § 148; Laws 1996, LB 1044, § 749; Laws 1998, LB 1354, § 40; Laws 2004, LB 1005, § 110; Laws 2007, LB296, § 642; Laws 2007, LB463, § 1235.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 642, with LB 463, section 1235, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-6039 Nursing assistant; qualifications; training requirements; department; duties; licensure as nurse; effect. (1) No person shall act as a nursing assistant in a nursing home unless such person:

(a) Is at least sixteen years of age and has not been convicted of a crime involving moral turpitude;

(b) Is able to speak and understand the English language or a language understood by a substantial portion of the nursing home residents; and

(c) Has successfully completed a basic course of training approved by the department for nursing assistants within one hundred twenty days of initial employment in the capacity of a nursing assistant at any nursing home.

(2)(a) A registered nurse or licensed practical nurse whose license has been revoked, suspended, or voluntarily surrendered in lieu of discipline may not act as a nursing assistant in a nursing home.

(b) If a person registered as a nursing assistant becomes licensed as a registered nurse or licensed practical nurse, his or her registration as a nursing assistant becomes null and void as of the date of licensure.

(c) A person listed on the Nurse Aide Registry with respect to whom a finding of conviction has been placed on the registry may petition the department to have such finding removed at any time after one year has elapsed since the date such finding was placed on the registry.

(3) The department may prescribe a curriculum for training nursing assistants and may adopt and promulgate rules and regulations for such courses of training. The content of the courses of training and competency evaluation programs shall be consistent with federal requirements unless exempted. The department may approve courses of training if such courses of training meet the requirements of this section. Such courses of training shall include instruction on the responsibility of each nursing assistant to report suspected abuse or neglect pursuant to sections 28-372 and 28-711. Nursing homes may carry out approved courses of training within the nursing home, except that nursing homes may not conduct the competency evaluation part of the program. The prescribed training shall be administered by a licensed registered nurse.

(4) For nursing assistants at intermediate care facilities for the mentally retarded, such courses of training shall be no less than twenty hours in duration and shall include at least fifteen hours of basic personal care training and five hours of basic therapeutic and emergency procedure training, and for nursing assistants at all nursing homes other than intermediate care facilities for the mentally retarded, such courses shall be no less than seventy-five hours in duration.

(5) This section shall not prohibit any facility from exceeding the minimum hourly or training requirements.

Source: Laws 1983, LB 273, § 2; Laws 1984, LB 416, § 11; Laws 1986, LB 921, § 11; Laws 1988, LB 463, § 49; Laws 1990, LB 1080, § 7; Laws 1994, LB 1210, § 149; Laws 2004, LB 1005, § 111; Laws 2007, LB185, § 43; Laws 2007, LB463, § 1236.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 185, section 43, with LB 463, section 1236, to reflect all amendments.

Note: The changes made by LB 185 became operative September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-6039.06 Eligibility for Licensee Assistance Program. Nursing assistants and paid dining assistants are eligible to participate in the Licensee Assistance Program as prescribed by section 38-175.

Source: Laws 2007, LB463, § 1240.
Operative date December 1, 2008.

71-6040 Department; approve programs and materials. The department shall approve all courses, lectures, seminars, course materials, or other instructional programs used to meet the requirements of sections 71-6038 to 71-6042.

Source: Laws 1983, LB 273, § 3; Laws 1996, LB 1044, § 750; Laws 2004, LB 1005, § 112; Laws 2007, LB463, § 1237.
Operative date December 1, 2008.

71-6041 Department; adopt rules and regulations. To protect the health, safety, and welfare of nursing home residents and the public, the department shall adopt and promulgate such rules and regulations as are necessary for the effective administration of sections 71-6038 to 71-6042. Such rules and regulations shall be consistent with federal requirements developed by the United States Department of Health and Human Services.

Source: Laws 1983, LB 273, § 4; Laws 1994, LB 1210, § 150; Laws 1996, LB 1044, § 751; Laws 2004, LB 1005, § 113; Laws 2007, LB463, § 1238.
Operative date December 1, 2008.

71-6042 Chief medical officer; enforcement; powers. The chief medical officer as designated in section 81-3115 shall have the authority to enforce sections 71-6038 to 71-6042 and rules and regulations adopted under section 71-6041 by any of the following means: Denial, suspension, restriction, or revocation of a nursing home's license, refusal of the renewal of a nursing home's license, restriction of a nursing home's admissions, or any other enforcement provision granted to the department.

Source: Laws 1983, LB 273, § 5; Laws 2004, LB 1005, § 114; Laws 2007, LB296, § 643; Laws 2007, LB463, § 1239.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 643, with LB 463, section 1239, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

(d) NURSING HOME ADVISORY COUNCIL

71-6043 Terms, defined. As used in sections 71-6043 to 71-6052, unless the context otherwise requires:

(1) Council means the Nursing Home Advisory Council as established by sections 71-6043 to 71-6052;

(2) Department means the Division of Public Health of the Department of Health and Human Services; and

(3) Nursing home means a nursing facility or a skilled nursing facility as defined in section 71-424 or 71-429.

Source: Laws 1967, c. 452, § 1, p. 1399; Laws 1982, LB 566, § 1; R.S.1943, (1986), § 71-2031; Laws 1996, LB 1044, § 752; Laws 1997, LB 307, § 193; Laws 2000, LB 819, § 129; Laws 2007, LB296, § 644. Operative date July 1, 2007.

71-6045 Council; members; qualifications. The council shall consist of sixteen members appointed by the Governor as follows:

(1) One member shall be a licensed registered nurse in the State of Nebraska;

(2) One member shall be a licensed physician and surgeon in the State of Nebraska;

(3) One member shall be a licensed dentist in the State of Nebraska;

(4) One member shall be a licensed pharmacist in the State of Nebraska;

(5) Three members shall be representatives of the Department of Health and Human Services with interest in or responsibilities for aging programs, medicaid, and regulation and licensure of nursing homes;

(6) One member shall be a representative of an agency of state or local government, other than the Department of Health and Human Services, with interests in or responsibilities for nursing homes or programs related thereto;

(7) Four members shall be laypersons representative of the public;

(8) Two members shall be administrators or owners of proprietary nursing homes; and

(9) Two members shall be administrators or owners of voluntary nursing homes.

Members serving on July 1, 2007, may serve until a replacement is appointed.

Source: Laws 1967, c. 452, § 3, p. 1400; Laws 1989, LB 344, § 17; R.S.Supp.,1989, § 71-2033; Laws 1996, LB 1044, § 753; Laws 2001, LB 398, § 80; Laws 2007, LB296, § 645. Operative date July 1, 2007.

71-6048 Council; meetings; chairperson; secretary. The council shall meet at least once during each calendar year and upon call of its chairperson or at the written request of a majority of its members. The council shall annually elect one of its members as chairperson and one of its members as secretary. The Director of Public Health or his or her designee shall represent the department at all meetings.

Source: Laws 1967, c. 452, § 6, p. 1401; R.S.1943, (1986), § 71-2036; Laws 1997, LB 307, § 194; Laws 2007, LB296, § 646. Operative date July 1, 2007.

(e) NURSING HOME ADMINISTRATION

71-6053 Terms, defined. For the purpose of sections 71-6053 to 71-6068, unless the context otherwise requires:

(1) Accredited institution means a postsecondary educational institution approved by the board;

(2) Active license means a license issued by the board to an administrator who meets the continuing competency requirements and who submits the required fee;

(3) Administrator or nursing home administrator means any individual who meets the education and training requirements of section 71-6054 and is responsible for planning, organizing, directing, and controlling the operation of a home for the aged or infirm, a nursing home, or an integrated system or who in fact performs such functions, whether or not such functions are shared by one or more other persons. Notwithstanding this subdivision or any other provision of law, the administrator of an intermediate care facility for the mentally retarded may be either a licensed nursing home administrator or a qualified mental retardation professional;

(4) Administrator-in-training means a person who is undergoing training to become a nursing home administrator and is directly supervised in a home for the aged or infirm or nursing home by a certified preceptor;

(5) Board means the Board of Examiners in Nursing Home Administration;

(6) Certified preceptor means a person who is currently licensed by the State of Nebraska as a nursing home administrator, has three years of experience as a nursing home administrator, has practiced within the last two years in a home for the aged or infirm or a nursing home, and is approved by the board to supervise an administrator-in-training or a person in a mentoring program;

(7) Core educational requirements means courses necessary for licensure as a nursing home administrator and includes courses in patient care and services, social services, financial management, administration, and rules, regulations, and standards relating to the operation of a health care facility;

(8) Degree or advanced degree means a baccalaureate, master's, or doctorate degree from an accredited institution and which includes studies in the core educational requirements;

(9) Degree or advanced degree in health care means a baccalaureate, master's, or doctorate degree from an accredited institution in health care, health care administration, or services;

(10) Department means the Department of Health and Human Services;

(11) Home for the aged or infirm or nursing home means any institution or facility licensed as a nursing facility or a skilled nursing facility by the department pursuant to the Health Care Facility Licensure Act, whether proprietary or nonprofit, including, but not limited to, homes for the aged or infirm owned or administered by the federal or state government or an agency or political subdivision thereof;

(12) Integrated system means a health and human services organization offering different levels of licensed care or treatment on the same premises;

(13) Internship means that aspect of the educational program of the associate degree in long-term care administration which allows for practical experience in a home for the aged or infirm or nursing home and occurs under the supervision of a certified preceptor;

(14) License means permission to engage in nursing home administration which would otherwise be unlawful in this state in the absence of such permission and which is granted to individuals who meet prerequisites and qualifications that allow them to perform nursing home administration tasks and use the title nursing home administrator;

(15) Nursing degree means a degree or diploma in nursing from an accredited program of nursing approved by the Board of Nursing;

(16) Previous work experience means at least two years working full time in a nursing home or home for the aged or infirm or previous work experience in health care administration; and

(17) Previous work experience in health care administration means at least two years working full time as an administrator or director of nursing of a hospital with a long-term care unit or assisted-living facility or director of nursing in a nursing home or home for the aged or infirm.

Source: Laws 1972, LB 1040, § 1; Laws 1980, LB 686, § 1; Laws 1986, LB 921, § 8; Laws 1988, LB 693, § 2; Laws 1988, LB 1100, § 115; R.S.Supp.,1988, § 71-2041.01; Laws 1992, LB 1019, § 82; Laws 1996, LB 1044, § 754; Laws 1999, LB 411, § 1; Laws 2000, LB 819, § 135; Laws 2002, LB 1021, § 91; Laws 2002, LB 1062, § 55; Laws 2003, LB 242, § 132; Laws 2007, LB296, § 647; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

71-6054 Transferred to section 38-2419.

71-6055 Transferred to section 38-2420.

71-6056 Transferred to section 38-2421.

71-6057 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-6058 Transferred to section 38-2422.

71-6059 License; form; display. Every license shall be in the form of a certificate under the name and seal of the department and signed by the chairperson, the vice-chairperson, the secretary of the board, and a representative of the department. A copy of all licenses shall be retained in the department and shall be given the same number as has been assigned to the licensee in the other records of the department. Every licensed nursing home administrator shall keep such license displayed in the office or in the place where he or she practices.

Source: Laws 1988, LB 693, § 8; R.S.Supp.,1988, § 71-2041.07; Laws 1997, LB 307, § 195; Laws 2007, LB296, § 648; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

71-6060 Transferred to section 38-2424.

71-6061 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-6062 Transferred to section 38-2418.

71-6063 Transferred to section 38-2423.

71-6064 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-6065 Board of Examiners in Nursing Home Administration; created; members; appointment; terms; removal; conflicts of interest. (1) The Board of Examiners in Nursing Home Administration is created. The board shall be under the supervision of the department and shall consist of a designated representative of the department and the following members appointed by the State Board of Health: (a) Two members who hold active licenses and are currently employed in the management, operation, or ownership of proprietary homes for the aged or infirm or nursing homes that serve the aged or infirm in Nebraska; (b) two members who hold active licenses and are currently employed in the management or operation of a nonprofit home for the aged or infirm or nursing home or hospital caring for chronically ill or infirm, aged patients; (c) one member who is a member of the faculty of a college or university located in the state who is actively engaged in a teaching program relating to business administration, social work, gerontology, or some other aspect of the administration of health care facilities; (d) one member who is a licensed physician and surgeon with a demonstrated interest in long-term care; (e) one member who is a licensed registered nurse; and (f) two members who are laypersons, at least the age of majority, residents of this state for at least five years preceding appointment, and representative of consumer viewpoints. The members of the board shall serve as members of such board until the expiration of their respective terms or until their successors have been appointed and qualified. Each appointed member who is an administrator shall be licensed pursuant to sections 71-6053 to 71-6068.

(2) The appointed members shall be appointed for terms of three years, and the terms shall be staggered so that the terms of three appointed members of the board expire each year. The term of each member shall commence on the first day of December following the expiration of the term of the member whom such person succeeds. A vacancy in any appointive position on the board shall be filled for the unexpired portion of the term by appointment by the State Board of Health in the same manner as original appointments are made. Appointed members shall serve until their successors are appointed and qualified.

(3) The State Board of Health shall have power to remove from office at any time any member of the board after a public hearing pursuant to the Administrative Procedure Act for physical or mental incapacity to carry out the duties of a board member, for continued neglect of duty, for incompetency, for acting beyond the individual member's scope of authority, for malfeasance in office, for any cause for which a license may be suspended or revoked, or for a lack of licensure.

(4) The department shall adopt and promulgate rules and regulations which establish definitions of conflicts of interest for members of the board and which establish procedures in the case such a conflict arises.

Source: Laws 1972, LB 1040, § 5; Laws 1980, LB 686, § 3; Laws 1988, LB 693, § 10; Laws 1989, LB 344, § 20; R.S.Supp.,1989, § 71-2045.01; Laws 1994, LB 1223, § 76; Laws 1996, LB 1044, § 755; Laws 1999, LB 411, § 9; Laws 2002, LB 1062, § 61; Laws 2007, LB296, § 649; Laws 2007, LB463, § 832.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 832, and transferred to section 38-2417 operative on December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

71-6066 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-6067 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

71-6068 Nursing home; loss of certification or license; administrator's license; hearing; when. Whenever the department conducts an investigation or hearing regarding loss of medicaid or medicare certification of a nursing home or suspension or revocation of the license of a nursing home, the board may hold a hearing to determine whether there is cause to suspend, limit, revoke, or deny the license of a nursing home administrator.

Source: Laws 1980, LB 686, § 10; R.S.1943, (1986), § 71-2045.10; Laws 1992, LB 1019, § 91; Laws 1996, LB 1044, § 756; Laws 2007, LB296, § 650; Laws 2007, LB463, § 1319.
Operative date July 1, 2007.

Note: This section was repealed by Laws 2007, LB 463, section 1319, operative on December 1, 2008.

ARTICLE 61

OCCUPATIONAL THERAPY

Section.

71-6101. Transferred to section 38-2501.

71-6102. Transferred to section 38-2502.

71-6103. Terms, defined.

- 71-6104. Transferred to section 38-2516.
- 71-6105. Transferred to section 38-2517.
- 71-6106. Transferred to section 38-2518.
- 71-6107. Transferred to section 38-2519.
- 71-6108. Transferred to section 38-2520.
- 71-6109. Repealed. Laws 2007, LB 463, § 1319.
- 71-6110. Repealed. Laws 2007, LB 463, § 1319.
- 71-6111. Repealed. Laws 2007, LB 463, § 1319.
- 71-6112. Repealed. Laws 2007, LB 463, § 1319.
- 71-6113. Transferred to section 38-2521.
- 71-6114. Transferred to section 38-2524.
- 71-6115. Transferred to section 38-2515.
- 71-6117. Transferred to section 38-2525.
- 71-6118. Transferred to section 38-2526.
- 71-6119. Transferred to section 38-2527.
- 71-6120. Transferred to section 38-2528.
- 71-6121. Transferred to section 38-2529.
- 71-6122. Transferred to section 38-2530.
- 71-6123. Transferred to section 38-2531.

71-6101 Transferred to section 38-2501.

71-6102 Transferred to section 38-2502.

71-6103 Terms, defined. For purposes of the Occupational Therapy Practice Act, unless the context otherwise requires:

(1) Active license means the license of a person who is acting, practicing, functioning, and working in compliance with the requirements of a license;

(2) Association means a recognized national or state association for occupational therapy;

(3) Board means the Board of Occupational Therapy Practice established by section 71-6115;

(4) Credentialing means the process of obtaining state approval to provide health care services or human services or to change aspects of a current approval and includes, but is not limited to, granting permission to use a protected title that signifies that a person is qualified to provide the services within the scope of practice of a profession;

(5) Deep thermal agent modalities means therapeutic ultrasound and phonophoresis. Deep thermal agent modalities does not include the use of diathermy or lasers;

(6) Department means the Division of Public Health of the Department of Health and Human Services;

(7) Electrotherapeutic agent modalities means neuromuscular electrical stimulation, transcutaneous electrical nerve stimulation, and iontophoresis. Electrotherapeutic agent modalities does not include the use of ultraviolet light;

(8) Mechanical devices means intermittent compression devices. Mechanical devices does not include devices to perform spinal traction;

(9) Occupational therapist means a person holding an active license to practice occupational therapy;

(10)(a) Occupational therapy means the use of purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, or the aging process in order to maximize independent function, prevent further disability, and achieve and maintain health and productivity.

(b) Occupational therapy encompasses evaluation, treatment, and consultation and may include (i) remediation or restoration of performance abilities that are limited due to impairment in biological, physiological, psychological, or neurological processes, (ii) adaptation of task, process, or the environment, or the teaching of compensatory techniques, in order to enhance performance, (iii) disability prevention methods and techniques which facilitate the development or safe application of performance skills, and (iv) health promotion strategies and practices which enhance performance abilities;

(11) Occupational therapy aide means a person who is not licensed by the board and who provides supportive services to occupational therapists and occupational therapy assistants;

(12) Occupational therapy assistant means a person holding an active license to assist in the practice of occupational therapy;

(13) Physical agent modalities means modalities that produce a biophysiological response through the use of water, temperature, sound, electricity, or mechanical devices; and

(14) Superficial thermal agent modalities means hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling technologies.

Source: Laws 1984, LB 761, § 31; Laws 1993, LB 121, § 451; Laws 1996, LB 1044, § 757; Laws 2001, LB 346, § 1; Laws 2002, LB 1021, § 95; Laws 2004, LB 1005, § 121; Laws 2007, LB296, § 651; Laws 2007, LB463, § 843.
Operative date July 1, 2007.

Note: This section was also amended by Laws 2007, LB 463, section 843, and transferred to section 38-2503 operative on December 1, 2008.

71-6104 Transferred to section 38-2516.

71-6105 Transferred to section 38-2517.

71-6106 Transferred to section 38-2518.

71-6107 Transferred to section 38-2519.

71-6108 Transferred to section 38-2520.

71-6109 Repealed. Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.

- 71-6110 Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-6111 Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-6112 Repealed.** Laws 2007, LB 463, § 1319.
Operative date December 1, 2008.
- 71-6113 Transferred to section 38-2521.**
- 71-6114 Transferred to section 38-2524.**
- 71-6115 Transferred to section 38-2515.**
- 71-6117 Transferred to section 38-2525.**
- 71-6118 Transferred to section 38-2526.**
- 71-6119 Transferred to section 38-2527.**
- 71-6120 Transferred to section 38-2528.**
- 71-6121 Transferred to section 38-2529.**
- 71-6122 Transferred to section 38-2530.**
- 71-6123 Transferred to section 38-2531.**

ARTICLE 62

NEBRASKA REGULATION OF HEALTH PROFESSIONS ACT

Section.

- 71-6208. Director, defined.
- 71-6211. Health professional group not previously regulated, defined.
- 71-6218. Regulated health professions, defined.
- 71-6221. Regulation of health profession; change in scope of practice; when.

71-6208 Director, defined. Director shall mean the Director of Public Health of the Division of Public Health.

Source: Laws 1985, LB 407, § 8; Laws 1996, LB 1044, § 758; Laws 2007, LB296, § 652.
Operative date July 1, 2007.

71-6211 Health professional group not previously regulated, defined. Health professional group not previously regulated shall mean those persons or groups who are not currently licensed or otherwise regulated under the Uniform Credentialing Act, who are

determined by the director to be qualified by training, education, or experience to perform the functions prescribed in this section, and whose principal functions, customarily performed for remuneration, are to render services directly or indirectly to individuals for the purpose of:

- (1) Preventing physical, mental, or emotional injury or illness, excluding persons acting in their capacity as clergy;
- (2) Facilitating recovery from injury or illness; or
- (3) Providing rehabilitative or continuing care following injury or illness.

Source: Laws 1985, LB 407, § 11; Laws 2007, LB463, § 1241.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

71-6218 Regulated health professions, defined. Regulated health professions shall mean those persons or groups who are currently licensed or otherwise regulated under the Uniform Credentialing Act, who are qualified by training, education, or experience to perform the functions prescribed in this section, and whose principal functions, customarily performed for remuneration, are to render services directly or indirectly to individuals for the purpose of:

- (1) Preventing physical, mental, or emotional injury or illness;
- (2) Facilitating recovery from injury or illness; or
- (3) Providing rehabilitative or continuing care following injury or illness.

Source: Laws 1985, LB 407, § 18; Laws 2007, LB463, § 1242.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

71-6221 Regulation of health profession; change in scope of practice; when. (1) After January 1, 1985, a health profession shall be regulated by the state only when:

(a) Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(b) Regulation of the profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest;

(c) The public needs, and can reasonably be expected to benefit from, assurance of initial and continuing professional ability by the state; and

(d) The public cannot be effectively protected by other means in a more cost-effective manner.

(2) If it is determined that practitioners of a health profession not currently regulated are prohibited from the full practice of their profession in Nebraska, then the following criteria shall be used to determine whether regulation is necessary:

(a) Absence of a separate regulated profession creates a situation of harm or danger to the health, safety, or welfare of the public and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(b) Creation of a separate regulated profession would not create a significant new danger to the health, safety, or welfare of the public;

(c) Creation of a separate regulated profession would benefit the health, safety, or welfare of the public; and

(d) The public cannot be effectively protected by other means in a more cost-effective manner.

(3) After March 18, 1988, the scope of practice of a regulated health profession shall be changed only when:

(a) The present scope of practice or limitations on the scope of practice create a situation of harm or danger to the health, safety, or welfare of the public and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(b) The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public;

(c) Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public; and

(d) The public cannot be effectively protected by other means in a more cost-effective manner.

(4) The Division of Public Health shall, by rule and regulation, establish standards for the application of each criterion which shall be used by the review bodies in recommending whether proposals for credentialing or change in scope of practice meet the criteria.

Source: Laws 1985, LB 407, § 21; Laws 1988, LB 384, § 7; Laws 1996, LB 1044, § 759; Laws 2007, LB296, § 653.
Operative date July 1, 2007.

ARTICLE 63

ENVIRONMENTAL HAZARDS

(a) ASBESTOS CONTROL

Section.

71-6301. Terms, defined.

71-6303. Administration of act; rules and regulations; fees; department; powers and duties.

71-6304. Business entity; license; qualifications.

71-6305. License; application; contents.

71-6306. License; term; renewal.

71-6307. Licensee or business entity; records required; contents.

71-6309. Waiver of requirements; when authorized.

71-6310. Individual worker; license required; qualifications; disciplinary actions; applications; current certificate holder; how treated; limited license; instructors; qualifications.

- 71-6310.01. Asbestos occupations; training courses; approval.
- 71-6310.02. Asbestos occupations; license; renewal; continuing competency requirements.
- 71-6310.03. Project designer or project monitor; duties.
- 71-6310.04. Fees.
- 71-6312. Violations; penalties.
- 71-6313. Violations; action to enjoin.
- 71-6314. Violations; citation; disciplinary actions; procedures; civil penalty; lien; enforcement.
- 71-6315. Existing rules, regulations, licenses, certificates, forms of approval, suits, other proceedings; how treated.
- 71-6317. Act, how cited.

(b) RESIDENTIAL LEAD-BASED PAINT PROFESSIONS CERTIFICATION ACT

- 71-6318. Act, how cited.
- 71-6318.01. Act; purpose and applicability.
- 71-6319.01. Definitions, where found.
- 71-6319.02. Abatement or abatement project, defined.
- 71-6319.04. Licensed abatement worker, defined.
- 71-6319.05. Licensed firm, defined.
- 71-6319.06. Licensed inspector, defined.
- 71-6319.07. Licensed project designer, defined.
- 71-6319.08. Licensed risk assessor, defined.
- 71-6319.09. Licensed supervisor, defined.
- 71-6319.10. Licensed visual lead-hazard advisor, defined.
- 71-6319.15. Department, defined.
- 71-6319.17. Repealed. Laws 2007, LB 296, § 815.
- 71-6319.28. Lead-based paint hazard, defined.
- 71-6319.29. Lead-based paint profession, defined.
- 71-6319.30. Lead-contaminated dust, defined.
- 71-6319.31. Lead-contaminated soil, defined.
- 71-6319.40. Visual lead-hazard screen, defined.
- 71-6320. Lead abatement project; firm; license required.
- 71-6321. Administration of act; rules and regulations; department; powers and duties.
- 71-6322. Firm; license; qualifications.
- 71-6323. License; application; contents; current certificate holder; how treated.
- 71-6326. Individuals; license required; qualifications; term; renewal; applications; current certificate holder; how treated.
- 71-6327. Lead-based paint professions; license; application; disciplinary actions; fees; continuing competency requirements.
- 71-6328. Governmental body; acceptance of bid; limitation.
- 71-6328.01. Reciprocity.
- 71-6328.02. Existing rules, regulations, licenses, certificates, forms of approval, suits, other proceedings; how treated.
- 71-6329. Violations; penalties.

- 71-6330. Violations; action to enjoin.
- 71-6331. Violations; disciplinary actions; civil penalty; procedure; appeal; lien; enforcement.
- 71-6331.01. Environmental audits; applicability.

(a) ASBESTOS CONTROL

71-6301 Terms, defined. For purposes of the Asbestos Control Act, unless the context otherwise requires:

(1) Asbestos means asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite;

(2) Asbestos encapsulation project means activities which include the coating of asbestos-containing surface material with a bridging or penetrating type of sealing material for the intended purpose of preventing the continued release of asbestos fibers from the material into the air. Such project does not include the repainting of a previously painted nonfriable asbestos-containing surface which is not damaged primarily for improving the appearance of such surface;

(3) Asbestos enclosure project means activities which physically isolate friable asbestos and which control and contain fibers released from asbestos-containing material by constructing a permanent airtight barrier between the asbestos-containing material and the occupied building space;

(4) Asbestos occupation means an inspector, management planner, project designer, project monitor, supervisor, or worker;

(5) Asbestos project means an asbestos enclosure project, an asbestos encapsulation project, an asbestos removal project, an asbestos-related demolition project, or an asbestos-related dismantling project but does not include (a) any activities which affect three square feet or less or three linear feet or less of asbestos-containing material on or in a structure or equipment or any appurtenances thereto or (b) any activities physically performed by a homeowner, a member of the homeowner's family, or an unpaid volunteer on or in the homeowner's residential property of four units or less;

(6) Asbestos removal project means activities which include the physical removal of friable asbestos-containing material from the surface of a structure or from equipment which is intended to remain in place after the removal. Such project also includes the physical removal of asbestos from a structure or equipment after such structure or equipment has been removed as part of an asbestos-related dismantling project;

(7) Asbestos-related demolition project means activities which include the razing of all or a portion of a structure which contains friable asbestos-containing materials or other asbestos-containing materials which may become friable when such materials are cut, crushed, ground, abraded, or pulverized;

(8) Asbestos-related dismantling project means activities which include the disassembly, handling, and moving of the components of any structure or equipment which has been coated with asbestos-containing material without first removing such material from the structure or from the equipment;

(9) Business entity means a partnership, limited liability company, firm, association, corporation, sole proprietorship, public entity, or other public or private business concern involved in an asbestos project except an entity solely involved as a management planner or project designer;

(10) Demolition means the wrecking, razing, or removal of any structure or load-supporting structural item of any structure, including any related material handling operations, and includes the intentional burning of any structure;

(11) Department means the Department of Health and Human Services;

(12) Enclosure means the construction of an airtight, impermeable, permanent barrier around asbestos-containing material to control the release of asbestos fibers into the air;

(13) Friable asbestos means asbestos in a form which can be crumbled, pulverized, or reduced to powder by hand pressure;

(14) Inspector means an individual who is licensed by the department to identify and assess the condition of asbestos-containing material;

(15) Instructor means an individual who is approved by the department to teach an asbestos-related training course;

(16) License means an authorization issued by the department to an individual to engage in a profession or to a business to provide services which would otherwise be unlawful in this state in the absence of such authorization;

(17) Management planner means an individual who is licensed by the department to assess the hazard of materials containing asbestos, to determine the appropriate response actions, and to write management plans;

(18) Project designer means an individual who is licensed by the department to formulate plans and write specifications for conducting asbestos projects;

(19) Project monitor means an individual who is licensed by the department to observe abatement activities performed by contractors, to represent the building owner to ensure work is completed according to specifications and in compliance with statutes and regulations, and to perform air monitoring to determine final clearance;

(20) Project review means review of a licensed business entity's proposed asbestos project;

(21) Renovation means the altering of a structure, one or more structural items, or one or more equipment items in any way, including any asbestos project performed on a structure, structural item, or equipment item;

(22) Supervisor means an individual who is licensed by the department to supervise and direct an asbestos project in accordance with the Asbestos Control Act and the rules and regulations adopted and promulgated pursuant to such act; and

(23) Worker means an individual who is licensed by the department to clean, handle, repair, remove, encapsulate, haul, dispose of, or otherwise work with asbestos material in a nonsupervisory capacity.

Source: Laws 1986, LB 1051, § 1; Laws 1988, LB 1073, § 1; Laws 1990, LB 923, § 1; Laws 1993, LB 121, § 454; Laws 1995, LB 406, § 73; Laws 1996, LB 1044, § 761; Laws 2007, LB296, § 654; Laws 2007, LB463, § 1243.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 654, with LB 463, section 1243, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-6303 Administration of act; rules and regulations; fees; department; powers and duties. (1) The department shall administer the Asbestos Control Act.

(2) The department shall adopt and promulgate rules and regulations necessary to carry out the act. The department shall adopt state standards governing asbestos projects and may adopt or incorporate part or all of any federal standards in the state standards so long as state standards are no less stringent than federal standards.

(3)(a) The department shall prescribe fees based upon the following schedule:

(i) For a business entity license or license renewal, not less than two thousand dollars or more than five thousand dollars;

(ii) For waiver on an emergency basis of a business entity license, not less than two thousand dollars or more than five thousand dollars;

(iii) For waiver of a license for a business entity not primarily engaged in asbestos projects, not less than two thousand dollars or more than five thousand dollars;

(iv) For approval of an initial training course, not less than one thousand dollars or more than two thousand five hundred dollars, which fee shall include one onsite inspection if the inspection is required by the department;

(v) For approval of a review course or a four-hour course on Nebraska law, rules, and regulations, not less than five hundred dollars or more than one thousand dollars, which fee shall include one onsite inspection if the inspection is required by the department;

(vi) For an onsite inspection of an asbestos project other than an initial inspection, not less than one hundred fifty dollars or more than two hundred fifty dollars. Such fees shall not be assessed for more than three onsite inspections per year during the period an actual asbestos project is in progress; and

(vii) For a project review of each asbestos project of a licensed business entity which is equal to or greater than two hundred sixty linear feet or any combination which is equal to or greater than one hundred sixty square feet and linear feet, including any initial onsite inspection, not less than two hundred dollars or more than five hundred dollars.

(b) Any business applicant whose application is rejected shall be allowed the return of the application fee, except that an administrative charge of three hundred dollars for a license and one hundred dollars for approval of a training course shall be retained by the department.

(c) All fees shall be based on the costs of administering the Asbestos Control Act. In addition to the fees prescribed in this section, the department may charge and receive the actual costs for board, room, and travel by employees in excess of three hundred dollars, which costs shall not exceed the amounts allowable in sections 81-1174 to 81-1177. All such fees collected by

the department shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money credited to the fund pursuant to this section shall be used by the department for the purpose of administering the act.

(4) At least once a year during the continuation of an asbestos project, the department shall conduct an onsite inspection of each licensed business entity's procedures for performing asbestos projects.

(5) The department may enter into agreements or contracts with public agencies to conduct any inspections required under the act.

(6) The department shall adopt and promulgate rules and regulations defining work practices for asbestos projects. The department may provide for alternatives to specific work practices when the health, safety, and welfare of all classes of asbestos occupations and the general public are adequately protected.

(7) The department may apply for and receive funds from the federal government and any other public or private entity for the purposes of administering the act.

Source: Laws 1986, LB 1051, § 3; Laws 1988, LB 1073, § 3; Laws 1991, LB 703, § 52; Laws 1995, LB 406, § 74; Laws 1996, LB 1044, § 762; Laws 2002, LB 1021, § 99; Laws 2003, LB 242, § 144; Laws 2007, LB296, § 655; Laws 2007, LB463, § 1244.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 655, with LB 463, section 1244, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-6304 Business entity; license; qualifications. To qualify for a license, a business entity shall:

(1) Own or demonstrate immediate and continuing access to and maintain in operable condition modern and effective equipment, as prescribed by the department, which is designed for use in asbestos projects;

(2) Ensure that each employee or agent of the business entity who will come into contact with asbestos or who will be present on an asbestos project is licensed as required by the Asbestos Control Act;

(3) Demonstrate to the satisfaction of the department that the business entity is capable of complying with all applicable requirements, procedures, and standards pertaining to the asbestos project;

(4) Have access to at least one approved asbestos disposal site for deposit of all asbestos waste that the business entity will generate during the term of the license; and

(5) Meet any other standards which the department may deem necessary to protect the health, safety, and welfare of all classes of asbestos occupations and the general public.

Source: Laws 1986, LB 1051, § 4; Laws 1988, LB 1073, § 4; Laws 2007, LB463, § 1245.
Operative date December 1, 2008.

71-6305 License; application; contents. (1) To apply for a license, a business entity shall submit an application to the department in the form required by the department and shall pay the fee prescribed by the department.

(2) The application shall include, but not be limited to:

- (a) The name, address, and nature of the business entity;
- (b) A statement that all individuals who will engage in any asbestos project for the business entity will be licensed as required by the Asbestos Control Act;
- (c) A description of the protective clothing and respirators that the business entity will use;
- (d) The name and address of each asbestos disposal site that the business entity will use;
- (e) A description of the site decontamination procedures that the business entity will use;
- (f) A description of the removal, enclosure, encapsulation, demolition, dismantling, and maintenance methods that the business entity will use;
- (g) A description of the procedures that the business entity will use for handling waste containing asbestos;
- (h) A description of the air monitoring procedures that the business entity will use;
- (i) A description of the procedures that the business entity will use in cleaning up the asbestos project;
- (j) The signature of the chief executive officer of the business entity or his or her designee; and
- (k) Such other information as may be necessary for the efficient administration and enforcement of the act and for the protection of the health, safety, and welfare of the general public and all classes of asbestos occupations.

Source: Laws 1986, LB 1051, § 5; Laws 1988, LB 1073, § 5; Laws 2007, LB463, § 1246.
Operative date December 1, 2008.

71-6306 License; term; renewal. (1) A license of a business entity shall expire on the first anniversary of its effective date unless it is renewed for one year as provided in this section.

(2) At least thirty days before the license expires, the department shall send to the licensee at his or her last-known address a renewal notice which states:

- (a) The date on which the current license expires;
- (b) The date by which the renewal application must be received by the department for the renewal to be issued and mailed before the license expires; and
- (c) The amount of the renewal fee.

(3) Before the license expires, the licensee may renew it for an additional one-year period if the licensee:

- (a) Is otherwise entitled to be licensed;
- (b) Submits a renewal application to the department in the form required by the department; and
- (c) Pays the renewal fee prescribed by the department.

Source: Laws 1986, LB 1051, § 6; Laws 1988, LB 1073, § 6; Laws 2007, LB463, § 1247.
Operative date December 1, 2008.

71-6307 Licensee or business entity; records required; contents. The licensee or a business entity, whether excepted from the requirements for licensure by section 71-6302 or whether operating under a waiver, shall keep a record of each asbestos project and shall make the record available to the department at any reasonable time. All such records shall be kept for at least thirty years. Each record shall include:

- (1) The name, address, and license number of the individual who supervised the asbestos project and of each employee or agent who worked on the project;
- (2) The location and description of the project and the amount of asbestos material that was removed;
- (3) The starting and completion dates of each instance of asbestos encapsulation, demolition, dismantling, maintenance, or removal;
- (4) A summary of the procedures that were used to comply with all applicable standards;
- (5) The name and address of each asbestos disposal site where the waste containing asbestos was deposited; and
- (6) Such other information as the department may deem necessary for the efficient administration and enforcement of the Asbestos Control Act and for the protection of the health, safety, and welfare of all classes of asbestos occupations and the general public.

Source: Laws 1986, LB 1051, § 7; Laws 1988, LB 1073, § 7; Laws 2007, LB463, § 1248.
Operative date December 1, 2008.

71-6309 Waiver of requirements; when authorized. (1) In the event of an emergency in which, in the opinion of the department, there is created a situation of present and severe danger which poses an immediate threat to the public health, safety, and welfare, the department may waive the requirement for licensure of an individual or business entity upon application and payment of the fee prescribed by the department. Such emergency waiver shall be limited to the time required to take protective measures.

(2) The department may, on a case-by-case basis, approve an alternative to a specific worker protection requirement for an asbestos project if the business entity submits a written description of the alternative procedure and demonstrates to the department's satisfaction that the proposed alternative procedure provides equivalent protection to the health, safety, and welfare of all classes of asbestos occupations and the general public.

(3) If the business entity is not primarily engaged in asbestos projects, the department may waive the requirement for a license upon application and payment of the fee prescribed by the department if worker protection requirements are met or an alternative procedure is approved pursuant to subsection (2) of this section and the health, safety, and welfare of the general public is protected.

Source: Laws 1986, LB 1051, § 9; Laws 1988, LB 1073, § 8; Laws 2007, LB296, § 656; Laws 2007, LB463, § 1249.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 656, with LB 463, section 1249, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-6310 Individual worker; license required; qualifications; disciplinary actions; applications; current certificate holder; how treated; limited license; instructors; qualifications. (1) An individual shall not be eligible to work on an asbestos project unless the individual holds the appropriate class of license issued by the department. Application for a license shall be made as provided in the Uniform Credentialing Act. An individual shall be credentialed in the same manner as an individual under subsection (1) of section 38-121 and shall be subject to the disciplinary provisions of the act as provided in section 71-6314.

(2) The department shall issue the following classes of licenses: Worker; supervisor; inspector; management planner; project monitor; and project designer. To qualify for a license of a particular class, an individual shall have (a) successfully completed a training course approved or administered by the department, (b) been examined by a physician within the preceding year and declared by the physician to be physically capable of working while wearing a respirator, and (c) passed an examination approved or administered by the department with at least the minimum score prescribed by the department. An individual holding such a certificate on December 1, 2008, shall be deemed to be holding a license under the Uniform Credentialing Act and the Asbestos Control Act on such date. The certificate holder may continue to practice under such certificate as a license in accordance with such acts until the certificate would have expired under its terms.

(3) As an alternative to the qualifications in subdivision (2)(a) of this section, an individual shall have completed a fully accredited United States Environmental Protection Agency Asbestos Hazard Emergency Response Act of 1986 training program or the individual shall be currently accredited by a United States Environmental Protection Agency fully accredited state asbestos model accreditation plan adopted pursuant to 40 C.F.R. 763. In addition to the alternative qualifications, the individual shall successfully complete a four-hour course approved by the department on Nebraska law, rules, and regulations and shall pass an examination thereon which shall be approved and may be administered by the department.

(4) The department may issue a limited license to a project designer or management planner who does not intend to enter any management plan, project design, or asbestos project worksite. An applicant for a limited license under this subsection shall not be required to comply with the requirements of subdivision (2)(b) of this section. A holder of a limited license shall not enter any management plan, project design, or asbestos project worksite. The limitation shall be endorsed upon the license. Violation of the limitation shall be grounds for disciplinary action against the license pursuant to section 71-6314. An individual holding a limited certificate on December 1, 2008, shall be deemed to be holding a limited license under the Uniform Credentialing Act and the Asbestos Control Act on such date. The certificate holder may continue to practice under such limited certificate as a limited license in accordance with such acts until the limited certificate would have expired under its terms.

(5) The department shall approve instructors of training courses. To qualify for approval, an individual shall have (a) graduated from high school or obtained a general educational development certificate or equivalent document as determined by the department, (b) successfully completed an approved four-hour course on Nebraska law, rules, and regulations, and (c) at least one year of actual work experience in the asbestos industry.

Source: Laws 1986, LB 1051, § 10; Laws 1988, LB 352, § 144; Laws 1988, LB 1073, § 9; Laws 1995, LB 406, § 75; Laws 1997, LB 752, § 195; Laws 2007, LB463, § 1250.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

71-6310.01 Asbestos occupations; training courses; approval. (1) The department shall approve training courses for each classification of asbestos occupation. Applicants for course approval shall meet the requirements for each course and shall submit an application on forms provided by the department together with the prescribed fee. Approved course providers shall use only approved instructors to teach each training course. The department shall conduct onsite inspections of the training courses offered by course providers.

(2) In order to be approved by the department, an initial inspector training course shall meet the following requirements: A three-day training course including lectures, demonstrations, a field trip, at least four hours of hands-on training, individual respirator-fit testing, and a written examination; background information on asbestos and potential health effects related to exposure to asbestos; functions, qualifications, and the role of inspectors; legal liabilities and defenses; understanding building systems; public, employee, and occupant relations; preinspection planning and review of previous inspection records and inspecting for friable and nonfriable asbestos-containing material and assessing the condition of asbestos-containing material; bulk sampling and documentation of asbestos; inspector respiratory protection and personal protective equipment; and record keeping and inspection report writing, regulatory review, and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(3) In order to be approved by the department, an initial management planner training course shall meet the following requirements: A three-day inspector training course as outlined in subsection (2) of this section and a two-day management planner training course including lectures, demonstrations, and a written examination; course overview; evaluation and interpretation of survey results, hazard assessment, and legal implications; evaluation and selection of control options; role of other professionals; developing an operations and maintenance plan; and regulatory review, record keeping for the management planner, assembling and submitting the management plan, financing abatement actions, and course review. The written examination shall be approved and may be administered by the

department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(4) In order to be approved by the department, an initial project designer training course shall meet the following requirements: A three-day training course including lectures, demonstrations, a field trip, and a written examination; background information on asbestos and potential health effects related to asbestos exposure; overview of abatement construction projects; safety system design specifications, employee personal protective equipment, and additional safety hazards; fiber aerodynamics and control, designing abatement solutions, final clearance process, and budgeting and cost estimation; writing abatement specifications and preparing abatement drawings; contract preparation and administration and legal liabilities and defenses; replacement of asbestos with asbestos-free substitutes; role of other consultants; occupied buildings; and relevant federal, state, and local regulatory requirements and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(5) In order to be approved by the department, an initial project monitor training course shall meet the following requirements: A five-day asbestos training course including lectures, demonstrations, at least six hours of hands-on training, and a written examination; roles and responsibilities of the project monitor; characteristics of asbestos and asbestos-containing materials; federal and state asbestos regulation overview; understanding building construction and building systems; asbestos abatement contracts, specifications, and drawings; response actions and abatement practices; asbestos abatement equipment; personal protective equipment; air monitoring strategies; safety and health issues other than asbestos; conducting visual inspections; final clearance process; legal responsibilities and liabilities of project monitors; record keeping and report writing; and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(6) In order to be approved by the department, an initial supervisor training course shall meet the following requirements: A five-day asbestos training course including lectures, demonstrations, at least fourteen hours of hands-on training, individual respirator-fit testing, and a written examination; the physical characteristics of asbestos and asbestos-containing materials and potential health effects related to asbestos exposure; employee personal protective equipment, state-of-the-art work practices, personal hygiene, additional safety hazards, medical monitoring, and air monitoring; relevant federal, state, and local regulatory requirements; respiratory protection programs, medical surveillance programs, and insurance and liability issues; record keeping for asbestos abatement projects and supervisory techniques for asbestos abatement activity; contract specifications; and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(7) In order to be approved by the department, an initial worker training course shall meet the following requirements: A four-day training course including lectures, demonstrations, at least fourteen hours of hands-on training, individual respirator-fit testing, and a written examination; physical characteristics of asbestos, potential health effects related to asbestos exposure, employee personal protective equipment, state-of-the-art work practices, personal hygiene, additional safety hazards, medical monitoring, and air monitoring; relevant federal, state, and local regulatory requirements, procedures, and standards; establishment of respiratory protection programs; and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(8) In order to be approved by the department, a course on Nebraska law, rules, and regulations required by subsection (3) of section 71-6310 shall consist of at least four hours of training on Nebraska law, rules, and regulations relating to asbestos. The written examination shall be approved and may be administered by the department. The passing score shall be determined by the department.

Source: Laws 1988, LB 1073, § 14; Laws 1995, LB 406, § 76; Laws 2007, LB463, § 1251.
Operative date December 1, 2008.

71-6310.02 Asbestos occupations; license; renewal; continuing competency requirements. (1) Any individual licensed in any of the asbestos occupations prescribed in section 71-6310, as a condition for license renewal, shall complete continuing competency activities as required by the department and shall be examined and approved by a physician as prescribed for initial applicants in section 71-6310. The licensee shall submit evidence as required by the department of satisfaction of the requirements of this section.

(2) The department shall adopt and promulgate rules and regulations to establish the continuing competency requirements pursuant to the Uniform Credentialing Act. Continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 38-145 which a licensee may select as an alternative to continuing education.

Source: Laws 1988, LB 1073, § 13; Laws 2002, LB 1021, § 100; Laws 2007, LB463, § 1252.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

71-6310.03 Project designer or project monitor; duties. If a project designer or a project monitor is selected by the structure's owner or operator for an asbestos project, the project designer and project monitor shall be responsible for the following:

(1) Project designers shall prepare plans and specifications for business entities conducting asbestos projects. The plans and specifications shall be consistent with the criteria,

requirements, and best interests of the structure's owner or operator and the requirements of the Asbestos Control Act. The project designer shall represent the owner or operator and ensure that these objectives are achieved by the business entity conducting the project throughout the project;

(2) Prior to preparing plans and specifications for any renovation project, a project designer shall ensure that any equipment items and any structural items of a structure affected by the renovation were inspected and assessed by a licensed inspector. Prior to preparing plans and specifications for any demolition, a project designer shall ensure that the entire structure was inspected and assessed by a licensed inspector. No dismantling or salvage operation shall begin before the inspection and assessment is completed;

(3) If a project designer or project monitor is selected by the owner or operator of the structure on or in which the asbestos project is conducted, he or she shall be independent of the business entity selected to perform the asbestos project. A private or public business entity which uses its own trained and licensed employees to perform asbestos projects may also use its own employees who are trained and licensed as project designers or project monitors to design and monitor projects conducted on or in its own structures; and

(4) If a project designer or project monitor is selected by the structure's owner or operator for an asbestos project, the project designer or project monitor shall oversee the activities of a business entity conducting an asbestos project to ensure that the requirements of the Asbestos Control Act and the rules and regulations adopted and promulgated pursuant to the act are met. Prior to allowing an asbestos project site to be returned to normal occupancy or function, a project designer or project monitor shall ensure that all waste, debris, and residue have been removed from the site in compliance with the act and the rules and regulations adopted and promulgated pursuant to the act.

Source: Laws 1995, LB 406, § 78; Laws 2007, LB463, § 1253.
Operative date December 1, 2008.

71-6310.04 Fees. The department shall establish and collect fees for issuance and renewal of licenses as provided in sections 38-151 to 38-157 for individuals licensed under section 71-6310.

Source: Laws 2007, LB463, § 1254.
Operative date December 1, 2008.

71-6312 Violations; penalties. (1) An individual or business entity which engages in an asbestos project without a valid license, except as otherwise provided in the Asbestos Control Act, shall be assessed a civil penalty of not less than five thousand dollars nor more than twenty-five thousand dollars for the first offense and not less than twenty-five thousand dollars nor more than one hundred thousand dollars for a second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(2) An individual who engages in an asbestos occupation without a valid license, except as otherwise provided in the act, shall be assessed a civil penalty of not less than five hundred dollars nor more than five thousand dollars for the first offense and not less than one thousand

dollars nor more than fifteen thousand dollars for the second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(3) Any business entity which knowingly engages in an asbestos project but which uses employees who do not hold a license shall be assessed a civil penalty of not less than five hundred dollars nor more than five thousand dollars for the first offense and not less than five thousand dollars nor more than ten thousand dollars for a second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(4) The civil penalties prescribed in subsections (1), (2), and (3) of this section shall be assessed in a civil action brought for such purpose by the Attorney General in the district court of the county in which the violation occurred.

(5) An individual or business entity which has been assessed a civil penalty under this section and subsequently engages in an asbestos project or an asbestos occupation without a valid license or using employees who do not hold a license, except as otherwise provided in the Asbestos Control Act:

- (a) For a first offense, shall be guilty of a Class I misdemeanor; and
- (b) For a second or subsequent offense, shall be guilty of a Class IV felony.

Source: Laws 1986, LB 1051, § 12; Laws 1988, LB 1073, § 10; Laws 1990, LB 923, § 3; Laws 2007, LB463, § 1255.
Operative date December 1, 2008.

71-6313 Violations; action to enjoin. The Attorney General may institute an action in the name of the state for an injunction or other process against any business entity or individual to restrain or prevent any violation of the Asbestos Control Act or of any rules and regulations adopted and promulgated pursuant to such act.

Source: Laws 1986, LB 1051, § 13; Laws 1988, LB 1073, § 11; Laws 2007, LB463, § 1256.
Operative date December 1, 2008.

71-6314 Violations; citation; disciplinary actions; procedures; civil penalty; lien; enforcement. (1) When the department determines that a business entity that holds a license has violated the Asbestos Control Act or any rule and regulation adopted and promulgated pursuant to the act, the department may, rather than initially instituting disciplinary proceedings pursuant to subsection (2) of this section, within seven working days after a finding of a violation is made, issue a citation to the licensee. The citation shall be served upon the licensee personally or by certified mail. Each citation shall specifically describe the nature of the violation and identify the statute, rule, or regulation violated. When a citation is served upon the licensee, the licensee shall have seven working days to remedy the violation. If such violation has not been remedied at the end of such time, the department may take such other action as is deemed appropriate pursuant to the Asbestos Control Act and the Administrative Procedure Act.

(2) Independent of the provisions of subsection (1) of this section, a license or approval issued pursuant to the Asbestos Control Act may be denied, refused renewal, suspended, or

revoked when the applicant or licensee violates any of the provisions of the act, fraudulently or deceptively obtains or attempts to obtain a license or approval, fails at any time to meet the qualifications for a license or approval, fails to comply with rules and regulations adopted and promulgated pursuant to the act, fails to meet any applicable state standard for asbestos projects, or employs or permits an unlicensed individual to work in an asbestos occupation. An individual shall be subject to the reporting, investigatory, and disciplinary provisions of sections 38-176 to 38-185, 38-1,106, 38-1,109 to 38-1,126, and 38-1,137 to 38-1,139 for any of the grounds for disciplinary action found in the Uniform Credentialing Act and for any violation of the Asbestos Control Act or the rules and regulations adopted and promulgated under the acts.

(3) In addition to the disciplinary actions provided for in subsection (2) of this section, the department may assess a civil penalty of not less than one thousand dollars nor more than twenty-five thousand dollars for each offense committed by any business entity licensed under the Asbestos Control Act or not less than one hundred dollars nor more than five thousand dollars for each offense committed by an individual licensed under the act for violation of the act or any rule or regulation adopted and promulgated pursuant thereto. Each day a violation continues shall constitute a separate offense.

(4) Whenever the department determines to deny, refuse to renew, suspend, or revoke a license or approval or assess a civil penalty, it shall send to the applicant or licensee a notice setting forth the particular reasons for the determination. The denial, suspension, refusal to renew, revocation, or assessment of a civil penalty shall become final thirty days after the mailing of the notice unless the applicant or licensee gives written notice to the department of a desire for a hearing. If a hearing is requested, the applicant or licensee shall be given a hearing before the department and shall have the right to present such evidence as may be proper. On the basis of such evidence, the determination shall be affirmed, modified, or set aside, and a copy of such decision setting forth the findings of fact and the particular reasons upon which such decision was based shall be sent by certified mail to the applicant or licensee. The decision shall become a final decision of the department and may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(5) Hearings held pursuant to this section shall be held in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department under such act.

(6) Any civil penalty assessed and unpaid under the Asbestos Control Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The department shall, within thirty days of receipt, remit any collected civil penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1986, LB 1051, § 14; Laws 1988, LB 352, § 145; Laws 1988, LB 1073, § 12; Laws 1995, LB 406, § 79; Laws 2007, LB463, § 1257.
Operative date December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

Uniform Credentialing Act, see section 38-101.

71-6315 Existing rules, regulations, licenses, certificates, forms of approval, suits, other proceedings; how treated. (1) All rules and regulations adopted prior to December 1, 2008, under the Asbestos Control Act shall continue to be effective to the extent not in conflict with the changes made by Laws 2007, LB 463.

(2) All licenses, certificates, or other forms of approval issued prior to December 1, 2008, in accordance with the Asbestos Control Act shall remain valid as issued for purposes of the changes made by Laws 2007, LB 463, unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to December 1, 2008, under the Asbestos Control Act shall be subject to the provisions of the act as they existed prior to December 1, 2008.

Source: Laws 2007, LB463, § 1258.
Operative date December 1, 2008.

71-6317 Act, how cited. Sections 71-6301 to 71-6317 shall be known and may be cited as the Asbestos Control Act.

Source: Laws 1988, LB 1073, § 18; Laws 1995, LB 406, § 80; Laws 2007, LB463, § 1259.
Operative date December 1, 2008.

Cross Reference

Asbestos removal, credentialing provisions, see sections 38-1,119 to 38-1,123.

(b) RESIDENTIAL LEAD-BASED PAINT PROFESSIONS CERTIFICATION ACT

71-6318 Act, how cited. Sections 71-6318 to 71-6331.01 shall be known and may be cited as the Residential Lead-Based Paint Professions Practice Act.

Source: Laws 1994, LB 1210, § 166; Laws 1995, LB 147, § 1; Laws 1999, LB 863, § 1; Laws 2007, LB463, § 1260.
Operative date December 1, 2008.

Cross Reference

Lead-based paint removal, credentialing provisions, see sections 38-1,119 to 38-1,123.

71-6318.01 Act; purpose and applicability. (1) The Residential Lead-Based Paint Professions Practice Act contains procedures and requirements for the accreditation of training programs, procedures and requirements for the licensure of individuals and firms engaged in lead-based paint activities, and work practice standards for performing lead-based paint activities. The act also requires that, except as otherwise provided in the act, all lead-based paint activities be performed by licensed individuals and firms.

(2) The act applies to all individuals and firms who are engaged in lead-based paint activities, except persons who perform lead-based paint activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the

owner or the owner's immediate family while these activities are being performed or unless a child residing in the building has been identified as having an elevated blood-lead level.

(3) While the act establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in the act requires that the owner or occupant undertake any particular lead-based paint activity.

Source: Laws 1999, LB 863, § 2; Laws 2007, LB463, § 1261.
Operative date December 1, 2008.

71-6319.01 Definitions, where found. For purposes of the Residential Lead-Based Paint Professions Practice Act, the definitions found in sections 71-6319.02 to 71-6319.40 apply.

Source: Laws 1999, LB 863, § 3; Laws 2007, LB463, § 1262.
Operative date December 1, 2008.

71-6319.02 Abatement or abatement project, defined. Abatement or abatement project means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil;

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures; and

(3)(a) Projects for which there is a written contract or other documentation which provides that a firm or an individual will be conducting activities in or to a residential dwelling or child-occupied facility that (i) will result in the permanent elimination of lead-based paint hazards or (ii) are designed to permanently eliminate lead-based paint hazards and are described in subdivision (1) or (2) of this section;

(b) Projects resulting in the permanent elimination of lead-based paint hazards conducted by firms or individuals licensed in accordance with the Residential Lead-Based Paint Professions Practice Act unless such projects are excluded from the definition of abatement or abatement project under this section;

(c) Projects resulting in the permanent elimination of lead-based paint hazards conducted by firms or individuals who or which, through company name or promotional literature, hold themselves out to be in the business of performing lead-based paint activities unless such projects are excluded from the definition of abatement or abatement project under this section;
or

(d) Projects resulting in the permanent elimination of lead-based paint hazards that are conducted in response to state or local abatement orders.

Abatement does not include renovation, remodeling, landscaping, or other activities when such activities are not designed to permanently eliminate lead-based paint hazards but instead are designed to repair, restore, or remodel a structure or dwelling even if such activities may incidentally result in a reduction or elimination of lead-based paint hazards. Abatement does

not include interim controls, operations, and maintenance activities or other measures and activities designed to temporarily but not permanently reduce lead-based paint hazards.

Source: Laws 1999, LB 863, § 4; Laws 2007, LB463, § 1263.
Operative date December 1, 2008.

71-6319.04 Licensed abatement worker, defined. Licensed abatement worker means an individual who has been trained by an accredited training program and licensed by the department to perform abatement projects.

Source: Laws 1999, LB 863, § 6; Laws 2007, LB463, § 1264.
Operative date December 1, 2008.

71-6319.05 Licensed firm, defined. Licensed firm means a firm to which the department has issued a license.

Source: Laws 1999, LB 863, § 7; Laws 2007, LB463, § 1265.
Operative date December 1, 2008.

71-6319.06 Licensed inspector, defined. Licensed inspector means an individual who has been trained by an accredited training program and licensed by the department to conduct inspections and sample for the presence of lead in dust and soil for the purposes of abatement clearance testing.

Source: Laws 1999, LB 863, § 8; Laws 2007, LB463, § 1266.
Operative date December 1, 2008.

71-6319.07 Licensed project designer, defined. Licensed project designer means an individual who has been trained by an accredited training program and licensed by the department to prepare abatement project designs, occupant protection plans, and abatement reports.

Source: Laws 1999, LB 863, § 9; Laws 2007, LB463, § 1267.
Operative date December 1, 2008.

71-6319.08 Licensed risk assessor, defined. Licensed risk assessor means an individual who has been trained by an accredited training program and licensed by the department to conduct risk assessments and to sample for the presence of lead in dust and soil for the purposes of abatement clearance testing.

Source: Laws 1999, LB 863, § 10; Laws 2007, LB463, § 1268.
Operative date December 1, 2008.

71-6319.09 Licensed supervisor, defined. Licensed supervisor means an individual who has been trained by an accredited training program and licensed by the department to supervise and conduct abatement projects and to prepare occupant protection plans and abatement reports.

Source: Laws 1999, LB 863, § 11; Laws 2007, LB463, § 1269.
Operative date December 1, 2008.

71-6319.10 Licensed visual lead-hazard advisor, defined. Licensed visual lead-hazard advisor means an individual who has been trained by an accredited training program and licensed by the department to conduct a visual lead-hazard screen.

Source: Laws 1999, LB 863, § 12; Laws 2007, LB463, § 1270.
Operative date December 1, 2008.

71-6319.15 Department, defined. Department means the Department of Health and Human Services.

Source: Laws 1999, LB 863, § 17; Laws 2007, LB296, § 657.
Operative date July 1, 2007.

71-6319.17 Repealed. Laws 2007, LB 296, § 815.

71-6319.28 Lead-based paint hazard, defined. Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated paint or is present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the department.

Source: Laws 1999, LB 863, § 30; Laws 2007, LB296, § 658.
Operative date July 1, 2007.

71-6319.29 Lead-based paint profession, defined. Lead-based paint profession means one of the specific types or categories of lead-based paint activities identified in the Residential Lead-Based Paint Professions Practice Act for which individuals may receive training from an accredited training program and become licensed by the department.

Source: Laws 1999, LB 863, § 31; Laws 2007, LB463, § 1271.
Operative date December 1, 2008.

71-6319.30 Lead-contaminated dust, defined. Lead-contaminated dust means surface dust in a residential dwelling or child-occupied facility that contains an area or mass concentration of lead at or in excess of levels identified by the department.

Source: Laws 1999, LB 863, § 32; Laws 2007, LB296, § 659.
Operative date July 1, 2007.

71-6319.31 Lead-contaminated soil, defined. Lead-contaminated soil means bare soil on residential real property or on the property of a child-occupied facility that contains lead at or in excess of levels identified by the department.

Source: Laws 1999, LB 863, § 33; Laws 2007, LB296, § 660.
Operative date July 1, 2007.

71-6319.40 Visual lead-hazard screen, defined. Visual lead-hazard screen means a visual assessment to determine the presence of deteriorated paint or other potential sources of lead-based paint hazards in a residential dwelling or child-occupied facility. Visual lead-hazard screen includes a written report explaining the results and limitations of the assessment. The written report will be provided to the person requesting the inspection, the residents of the dwelling, and the owner of the dwelling or child-occupied facility. A licensed visual lead-hazard advisor shall retain a copy of the report in his or her files for three years.

Source: Laws 1999, LB 863, § 42; Laws 2007, LB463, § 1272.
Operative date December 1, 2008.

71-6320 Lead abatement project; firm; license required. Except as otherwise provided in the Residential Lead-Based Paint Professions Practice Act, a firm shall not engage in an abatement project unless the firm holds a license for that purpose.

Source: Laws 1994, LB 1210, § 168; Laws 1999, LB 863, § 43; Laws 2007, LB463, § 1273.
Operative date December 1, 2008.

71-6321 Administration of act; rules and regulations; department; powers and duties. (1) The department shall administer the Residential Lead-Based Paint Professions Practice Act.

(2) The department shall adopt and promulgate rules and regulations necessary to carry out such act. The department shall adopt state standards governing abatement projects and may adopt or incorporate part or all of any federal standards in such state standards so long as state standards are no less stringent than federal standards.

(3) The department shall prescribe fees based upon the following schedule:

(a) For an annual firm license or license renewal, not less than two hundred dollars or more than five hundred dollars;

(b) For accreditation of a training program, not less than one thousand dollars or more than two thousand five hundred dollars, which fee shall include one onsite inspection if such inspection is required by the department;

(c) For accreditation of a review course or a course on Nebraska law, rules, and regulations, not less than five hundred dollars or more than one thousand dollars, which fee shall include one onsite inspection if such inspection is required by the department;

(d) For onsite inspections other than initial inspections, not less than one hundred fifty dollars or more than two hundred fifty dollars. Such fees shall not be assessed for more than three onsite inspections per year during the period an actual abatement project is in progress; and

(e) For a project review of each abatement project of a licensed firm, not less than two hundred dollars or more than five hundred dollars.

Any business applicant whose application is rejected shall be allowed the return of the application fee, except that an administrative charge of one hundred dollars for a firm license and for accreditation of a training program shall be retained by the department.

All fees shall be based on the costs of administering the act. In addition to the fees prescribed in this section, the department may charge and receive the actual costs for board, room, and travel by employees in excess of three hundred dollars, which costs shall not exceed the amounts allowable in sections 81-1174 to 81-1177. All such fees collected by the department shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money credited to the fund pursuant to this section shall be used by the department for the purpose of administering the act.

(4) At least once a year during the continuation of an abatement project the department shall conduct an onsite inspection of each licensed firm's procedures for performing abatement projects.

(5) The department may enter into agreements or contracts with public agencies to conduct any inspections required under the act if such agencies have the appropriate licensure or accreditation as described in the act.

(6) The department shall adopt and promulgate rules and regulations defining work practices for abatement projects, for the licensure of lead-based paint professions, for the accreditation of training programs, for the accreditation of training program providers, for the dissemination of prerenovation information to homeowners and occupants, for the facilitation of compliance with federal lead-based paint hazard control grant programs, and for the implementation of lead-based paint compliance monitoring and enforcement activities. The department may provide for alternatives to specific work practices when the health, safety, and welfare of all classes of lead-based paint professions and the general public are adequately protected.

(7) The department may apply for and receive funds from the federal government and any other public or private entity for the purposes of administering the act. Any funds applied for, received, or used by the department or any political subdivision from the federal government or any public entity may be used only to abate lead-based paint hazards and for the administration of lead-based paint programs which address health and environmental hazards caused by lead-based paint.

Source: Laws 1994, LB 1210, § 169; Laws 1996, LB 1044, § 764; Laws 1999, LB 863, § 44; Laws 2001, LB 668, § 3; Laws 2002, LB 1021, § 101; Laws 2003, LB 242, § 145; Laws 2007, LB296, § 661; Laws 2007, LB463, § 1274.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 661, with LB 463, section 1274, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-6322 Firm; license; qualifications. To qualify for a license, a firm shall:

(1) Own or demonstrate immediate and continuing access to and maintain in operable condition modern and effective equipment, as prescribed by the department, which is designed for use in abatement projects;

(2) Ensure that each employee or agent of the firm who will participate in an abatement project is licensed as required by the Residential Lead-Based Paint Professions Practice Act;

(3) Demonstrate to the satisfaction of the department that the firm is capable of complying with all applicable requirements, procedures, and standards pertaining to abatement projects; and

(4) Meet any other standards which the department may deem necessary to protect the health, safety, and welfare of all classes of lead-based paint professions and the general public.

Source: Laws 1994, LB 1210, § 170; Laws 1999, LB 863, § 45; Laws 2007, LB463, § 1275.
Operative date December 1, 2008.

71-6323 License; application; contents; current certificate holder; how treated. (1) To apply for a license, a firm shall submit an application to the department in the form required by the department and shall pay the fee prescribed by the department.

(2) The application shall include, but not be limited to:

(a) The name, address, and nature of the firm;

(b) A statement that all individuals who will engage in any abatement project for the firm will be licensed as required by the Residential Lead-Based Paint Professions Practice Act;

(c) A description of the removal, enclosure, encapsulation, demolition, dismantling, and maintenance methods that the firm will use;

(d) A description of the procedures that the firm will use for handling lead-containing waste;

(e) A description of the procedures that the firm will use in cleaning up the abatement project;

(f) The signature of the chief executive officer of the firm or his or her designee; and

(g) Such other information as may be necessary for the efficient administration and enforcement of the act and for the protection of the health, safety, and welfare of all classes of lead-based paint professions and the general public.

(3) A firm holding a certificate on December 1, 2008, shall be deemed to be holding a license under the Residential Lead-Based Paint Professions Practice Act and the Uniform Credentialing Act on such date. The certificate holder may continue to practice under such certificate as a license in accordance with such acts until the certificate would have expired under its terms.

Source: Laws 1994, LB 1210, § 171; Laws 1999, LB 863, § 46; Laws 2007, LB463, § 1276.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

71-6326 Individuals; license required; qualifications; term; renewal; applications; current certificate holder; how treated. (1) An individual shall not be eligible to work on an abatement project unless the individual holds a license issued by the department.

(2) The department shall issue the following classes of licenses: Worker, supervisor, inspector, risk assessor, visual lead-hazard advisor, elevated blood-lead level inspector, and project designer. To qualify for a license of a particular class, an individual shall have (a)

successfully completed a training course approved or administered by the department, (b) passed an examination approved or administered by the department with at least the minimum score prescribed by the department, and (c) for the classes of worker and supervisor, been examined by a physician within the preceding year and declared by the physician to be physically capable of working while wearing a respirator.

(3) An individual holding such a certificate on December 1, 2008, shall be deemed to be holding a license under the Residential Lead-Based Paint Professions Practice Act and the Uniform Credentialing Act on such date. The certificate holder may continue to practice under such certificate as a license in accordance with such acts until the certificate would have expired under its terms.

Source: Laws 1994, LB 1210, § 174; Laws 1997, LB 752, § 196; Laws 1999, LB 863, § 47; Laws 2007, LB463, § 1277.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

71-6327 Lead-based paint professions; license; application; disciplinary actions; fees; continuing competency requirements. (1) An applicant for a license in any of the lead-based paint professions prescribed in the Residential Lead-Based Paint Professions Practice Act shall be made as provided in the Uniform Credentialing Act. An individual shall be credentialed in the same manner as an individual under subsection (1) of section 38-121 and shall be subject to the disciplinary provisions of the Uniform Credentialing Act as provided in section 71-6331. The department shall establish and collect license and renewal fees as provided in sections 38-151 to 38-157.

(2) The department shall adopt and promulgate rules and regulations to establish the continuing competency requirements pursuant to the Uniform Credentialing Act. Continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 38-145 which a licensee may select as an alternative to continuing education.

Source: Laws 1994, LB 1210, § 175; Laws 1999, LB 863, § 48; Laws 2002, LB 1021, § 102; Laws 2007, LB463, § 1278.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

71-6328 Governmental body; acceptance of bid; limitation. No state agency, county, city, village, school district, or other political subdivision shall accept a bid in connection with any abatement project from a firm which does not hold a license from the department at the time the bid is submitted.

Source: Laws 1994, LB 1210, § 176; Laws 1999, LB 863, § 49; Laws 2007, LB463, § 1279.
Operative date December 1, 2008.

71-6328.01 Reciprocity. Any individual or firm who or which has been issued a license, a certificate, or accreditation for training in another state which (1) has a licensure, certification, or accreditation program approved by the federal Environmental Protection Agency, (2) has licensure, accreditation, certification, education, and experience requirements substantially equal to or greater than those adopted by this state, and (3) grants equal licensure, certification, and accreditation privileges to individuals and firms licensed or accredited and residing in this state may be issued an equivalent license or accreditation in Nebraska upon terms and conditions determined by the department. The terms and conditions may reduce the time period the license is valid and the fee requirements.

Source: Laws 1999, LB 863, § 53; Laws 2003, LB 242, § 146; Laws 2007, LB463, § 1280.
Operative date December 1, 2008.

71-6328.02 Existing rules, regulations, licenses, certificates, forms of approval, suits, other proceedings; how treated. (1) All rules and regulations adopted prior to December 1, 2008, under the Residential Lead-Based Paint Professions Certification Act shall continue to be effective under the Residential Lead-Based Paint Professions Practice Act to the extent not in conflict with the changes made by Laws 2007, LB 463.

(2) All licenses, certificates, or other forms of approval issued prior to December 1, 2008, in accordance with the Residential Lead-Based Paint Professions Certification Act shall remain valid as issued for purposes of the changes made by Laws 2007, LB 463, in the Residential Lead-Based Paint Professions Practice Act unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to December 1, 2008, under the Residential Lead-Based Paint Professions Certification Act shall be subject to the provisions of the act as they existed prior to December 1, 2008.

Source: Laws 2007, LB463, § 1285.
Operative date December 1, 2008.

71-6329 Violations; penalties. (1) A firm which engages in an abatement project without a valid license as provided in the Residential Lead-Based Paint Professions Practice Act shall be assessed a civil penalty of not less than five thousand dollars nor more than twenty-five thousand dollars for the first offense and not less than twenty-five thousand dollars nor more than one hundred thousand dollars for a second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(2) An individual who engages in a lead-based paint profession without a valid license shall be assessed a civil penalty of not less than five hundred dollars nor more than five thousand dollars for the first offense and not less than one thousand dollars nor more than fifteen thousand dollars for the second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(3) Any firm which knowingly engages in an abatement project but which uses employees who do not hold licenses shall be assessed a civil penalty of not less than five thousand dollars

nor more than twenty-five thousand dollars for the first offense and not less than twenty-five thousand dollars nor more than one hundred thousand dollars for a second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(4) Any firm conducting an accredited training program which knowingly engages in issuing fraudulent licenses or fails to conduct its training program in accordance with its accreditation shall, in addition to having its accreditation revoked, pay a civil penalty of not less than five thousand dollars nor more than twenty-five thousand dollars.

(5) The civil penalties prescribed in subsections (1), (2), (3), and (4) of this section shall be assessed in a civil action brought for such purpose by the Attorney General or the county attorney in the district court of the county in which the violation occurred.

(6) An individual or firm which has been assessed a civil penalty under this section and subsequently engages in an abatement project or a lead-based paint profession without a valid license or using employees who do not hold licenses, conducts training programs without being accredited by the department, or issues fraudulent licenses, except as otherwise provided in the act:

(a) For a first offense, shall be guilty of a Class I misdemeanor; and

(b) For a second or subsequent offense, shall be guilty of a Class IV felony.

Source: Laws 1994, LB 1210, § 177; Laws 1999, LB 863, § 50; Laws 2007, LB463, § 1281.
Operative date December 1, 2008.

71-6330 Violations; action to enjoin. Upon the request of the department, the Attorney General or appropriate county attorney shall institute without delay an action in the name of the state for proceedings appropriate against any individual or firm to restrain or prevent any violation of the Residential Lead-Based Paint Professions Practice Act or of any rules and regulations adopted and promulgated pursuant to the act.

Source: Laws 1994, LB 1210, § 178; Laws 1999, LB 863, § 51; Laws 2007, LB463, § 1282.
Operative date December 1, 2008.

71-6331 Violations; disciplinary actions; civil penalty; procedure; appeal; lien; enforcement. (1) An application or a license under the Residential Lead-Based Paint Professions Practice Act may be denied, refused renewal, suspended, or revoked if the applicant or licensee violates any of the provisions of the act, fraudulently or deceptively obtains or attempts to obtain a license, fails at any time to meet the qualifications for a license, fails to comply with rules and regulations adopted and promulgated pursuant to the act, fails to meet any applicable state standard for abatement projects, or employs or permits an unlicensed individual to work in a lead-based paint profession. An individual shall be subject to the reporting, investigatory, and disciplinary provisions of sections 38-176 to 38-185, 38-1,106, 38-1,109 to 38-1,126, and 38-1,137 to 38-1,139 for any of the grounds for disciplinary action found in the Uniform Credentialing Act and for any violation of the Residential Lead-Based Paint Professions Practice Act or the rules and regulations adopted and promulgated under the acts.

(2) In addition to the disciplinary actions provided for in subsection (1) of this section, the department may assess a civil penalty of not less than one thousand dollars nor more than three thousand dollars for each offense committed by any firm licensed under the act for violation of the act or any rule or regulation adopted and promulgated pursuant thereto. Each day a violation continues shall constitute a separate offense.

(3) Whenever the department determines to deny, refuse to renew, suspend, or revoke a firm license or assess a civil penalty on a firm, it shall send to the applicant or licensee a notice setting forth the particular reasons for the determination. The denial, suspension, refusal to renew, revocation, or assessment of a civil penalty shall become final thirty days after the mailing of the notice unless the applicant or licensee gives written notice to the department of a desire for a hearing. If a hearing is requested, the applicant or licensee shall be given a hearing before the department and shall have the right to present such evidence as may be proper. On the basis of such evidence, the determination shall be affirmed, modified, or set aside, and a copy of such decision setting forth the findings of fact and the particular reasons upon which such decision was based shall be sent by certified mail to the applicant or licensee. The decision shall become a final decision of the department and may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

(4) Hearings held pursuant to this section shall be held in accordance with the Administrative Procedure Act.

(5) Any civil penalty assessed and unpaid under the Residential Lead-Based Paint Professions Practice Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The department shall, within thirty days of receipt, remit any collected civil penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1994, LB 1210, § 179; Laws 1999, LB 863, § 52; Laws 2007, LB463, § 1283.
Operative date December 1, 2008.

Cross Reference

Administrative Procedure Act, see section 84-920.

71-6331.01 Environmental audits; applicability. Sections 25-21,254 to 25-21,264 do not apply to the Residential Lead-Based Paint Professions Practice Act.

Source: Laws 1999, LB 863, § 54; Laws 2007, LB463, § 1284.
Operative date December 1, 2008.

ARTICLE 65

IN-HOME PERSONAL SERVICES

Section.

71-6501. Terms, defined.

71-6502. In-home personal services worker; qualifications.

71-6503. In-home personal services agency; duties.

71-6504. Sections; applicability.

71-6501 Terms, defined. For purposes of sections 71-6501 to 71-6504:

(1) Activities of daily living has the definition found in section 71-6602;

(2) Attendant services means services provided to nonmedically fragile persons, including hands-on assistance with activities of daily living, transfer, grooming, medication reminders, and similar activities;

(3) Companion services means the provision of companionship and assistance with letter writing, reading, and similar activities;

(4) Homemaker services means assistance with household tasks, including, but not limited to, housekeeping, personal laundry, shopping, incidental transportation, and meals;

(5) In-home personal services means attendant services, companion services, and homemaker services that do not require the exercise of medical or nursing judgment provided to a person in his or her residence to enable the person to remain safe and comfortable in such residence;

(6) In-home personal services agency means an entity that provides or offers to provide in-home personal services for compensation by employees of the agency or by persons with whom the agency has contracted to provide such services. In-home personal services agency does not include a local public health department as defined in section 71-1626, a health care facility as defined in section 71-413, a health care service as defined in section 71-415, programs supported by the federal Corporation for National and Community Service, an unlicensed home care registry or similar entity that screens and schedules independent contractors as caregivers for persons, or an agency that provides only housecleaning services. A home health agency may be an in-home personal services agency; and

(7) In-home personal services worker means a person who meets the requirements of section 71-6502 and provides in-home personal services.

Source: Laws 2007, LB236, § 39.
Effective date September 1, 2007.

71-6502 In-home personal services worker; qualifications. An in-home personal services worker:

(1) Shall be at least eighteen years of age;

(2) Shall have good moral character;

(3) Shall not have been convicted of a crime under the laws of Nebraska or another jurisdiction, the penalty for which is imprisonment for a period of more than one year and

which crime is rationally related to the person's fitness or capacity to act as an in-home personal services worker;

(4) Shall have no adverse findings on the Adult Protective Services Central Registry, the central register created in section 28-718, the Medication Aide Registry, the Nurse Aide Registry, or the central registry maintained by the sex offender registration and community notification division of the Nebraska State Patrol pursuant to section 29-4004;

(5) Shall be able to speak and understand the English language or the language of the person for whom he or she is providing in-home personal services; and

(6) Shall have training sufficient to provide the requisite level of in-home personal services offered.

Source: Laws 2007, LB236, § 40.
Effective date September 1, 2007.

71-6503 In-home personal services agency; duties. An in-home personal services agency shall employ or contract with only persons who meet the requirements of section 71-6502 to provide in-home personal services. The in-home personal services agency shall perform or cause to be performed a criminal history record information check on each in-home personal services worker and a check of his or her driving record as maintained by the Department of Motor Vehicles or by any other state which has issued an operator's license to the in-home personal services worker, when driving is a service provided by the in-home personal services worker, and shall maintain documentation of such checks in its records for inspection at its place of business.

Source: Laws 2007, LB236, § 41.
Effective date September 1, 2007.

71-6504 Sections; applicability. Sections 71-6501 to 71-6503 do not apply to the performance of health maintenance activities by designated care aides pursuant to section 38-2219 or to persons who provide personal assistant services, respite care or habilitation services, or aged and disabled services.

Source: Laws 2007, LB236, § 42; Laws 2007, LB247, § 85.

Note: This section passed in Laws 2007, LB 236, section 42, and was amended by Laws 2007, LB 247, section 85.

Note: The changes made by LB 236 became effective September 1, 2007. The changes made by LB 247 became operative December 1, 2008.

ARTICLE 66

HOME HEALTH AIDE SERVICES

Section.

71-6602. Terms, defined.

71-6602 Terms, defined. As used in sections 71-6601 to 71-6615, unless the context otherwise requires:

(1) Activities of daily living means assistance with ambulation, toileting, feeding, and similar activities;

(2) Basic therapeutic care means basic health care procedures, including, but not limited to, measuring vital signs, applying hot and cold applications and nonsterile dressings, and assisting with, but not administering, internal and external medications which are normally self-administered. Basic therapeutic care does not include health care procedures which require the exercise of nursing or medical judgment;

(3) Department means the Department of Health and Human Services;

(4) Home health agency means a home health agency as defined in section 71-417;

(5) Home health aide means a person who is employed by a home health agency to provide personal care, assistance with the activities of daily living, and basic therapeutic care to patients of the home health agency;

(6) Personal care means bathing, hair care, nail care, shaving, dressing, oral care, and similar activities;

(7) Supervised practical training means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse; and

(8) Vital signs means temperature, pulse, respiration, and blood pressure.

Source: Laws 1988, LB 1100, § 117; Laws 1991, LB 703, § 54; Laws 1996, LB 1044, § 765; Laws 1998, LB 1354, § 41; Laws 2000, LB 819, § 136; Laws 2007, LB296, § 662.
Operative date July 1, 2007.

ARTICLE 67

MEDICATION REGULATION

(b) MEDICATION AIDE ACT

Section.

71-6720. Purpose of act; applicability.

71-6721. Terms, defined.

71-6724. Medication administration records.

71-6725. Minimum standards for competencies.

71-6726. Medication aide; registration; qualifications; report of conviction required; licensure as nurse; effect.

71-6727. Medication Aide Registry; contents.

71-6728. Registration; renewal; fee.

71-6732. Contested actions; procedure.

71-6733. Reapplication authorized; lifting of sanctions.

71-6734. Fees.

71-6742. Eligibility for Licensee Assistance Program.

(c) STORAGE, HANDLING, AND DISPOSAL OF MEDICATION
71-6743. Rules and regulations.

(b) MEDICATION AIDE ACT

71-6720 Purpose of act; applicability. (1) The purposes of the Medication Aide Act are to ensure the health, safety, and welfare of the public by providing for the accurate, cost-effective, efficient, and safe utilization of medication aides to assist in the administration of medications by (a) competent individuals, (b) caretakers who are parents, foster parents, family, friends or legal guardians, and (c) licensed health care professionals.

(2) The act applies to all settings in which medications are administered except the home, unless the in-home administration of medication is provided through a licensed home health agency or licensed or certified home and community-based provider.

(3) The act does not apply to the provision of reminders to persons to self-administer medication or assistance to persons in the delivery of nontherapeutic topical applications by in-home personal services workers. For purposes of this subsection, in-home personal services worker has the definition found in section 71-6501.

Source: Laws 1998, LB 1354, § 10; Laws 2007, LB236, § 44.
Effective date September 1, 2007.

71-6721 Terms, defined. For purposes of the Medication Aide Act:

(1) Ability to take medications independently means the individual is physically capable of (a) the act of taking or applying a dose of a medication, (b) taking or applying the medication according to a specific prescription or recommended protocol, and (c) observing and monitoring himself or herself for desired effect, side effects, interactions, and contraindications of the medication and taking appropriate actions based upon those observations;

(2) Administration of medication includes, but is not limited to (a) providing medications for another person according to the five rights, (b) recording medication provision, and (c) observing, monitoring, reporting, and otherwise taking appropriate actions regarding desired effects, side effects, interactions, and contraindications associated with the medication;

(3) Caretaker means a parent, foster parent, family member, friend, or legal guardian who provides care for an individual;

(4) Child care facility means an entity or a person licensed under the Child Care Licensing Act;

(5) Competent individual means an adult who is the ultimate recipient of medication and who has the capability and capacity to make an informed decision about taking medications;

(6) Department means the Department of Health and Human Services;

(7) Direction and monitoring means the acceptance of responsibility for observing and taking appropriate action regarding any desired effects, side effects, interactions, and

contraindications associated with the medication by a (a) competent individual for himself or herself, (b) caretaker, or (c) licensed health care professional;

(8) Facility means a health care facility or health care service as defined in section 71-413 or 71-415 or an entity or person certified by the department to provide home and community-based services;

(9) Five rights means getting the right drug to the right recipient in the right dosage by the right route at the right time;

(10) Health care professional means an individual for whom administration of medication is included in the scope of practice;

(11) Home means the residence of an individual but does not include any facility or school;

(12) Intermediate care facility for the mentally retarded has the definition found in section 71-421;

(13) Informed decision means a decision made knowingly, based upon capacity to process information about choices and consequences, and made voluntarily;

(14) Medication means any prescription or nonprescription drug intended for treatment or prevention of disease or to affect body function in humans;

(15) Medication aide means an individual who is listed on the medication aide registry operated by the department;

(16) Nonprescription drug has the definition found in section 38-2829;

(17) Nursing home means any facility or a distinct part of any facility that provides care as defined in sections 71-420, 71-422, 71-424, and 71-429;

(18) Prescription drug has the definition of prescription drug or device as found in section 38-2841;

(19) Provision of medication means the component of the administration of medication that includes giving or applying a dose of a medication to an individual and includes helping an individual in giving or applying such medication to himself or herself;

(20) PRN means an administration scheme in which a medication is not routine, is taken as needed, and requires assessment for need and effectiveness;

(21) Recipient means a person who is receiving medication;

(22) Routine, with reference to medication, means the frequency of administration, amount, strength, and method are specifically fixed; and

(23) School means an entity or person meeting the requirements for a school set by Chapter 79.

Source: Laws 1998, LB 1354, § 11; Laws 2000, LB 819, § 138; Laws 2001, LB 398, § 81; Laws 2004, LB 1005, § 132; Laws 2007, LB296, § 663; Laws 2007, LB463, § 1286.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 663, with LB 463, section 1286, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Child Care Licensing Act, see section 71-1908.

71-6724 Medication administration records. A medication aide, a facility using a medication aide, a child care facility using the services of a person licensed to operate a child care facility or a staff member of a child care facility, or a school using the services of a staff member of the school shall keep and maintain accurate medication administration records. The medication administration records shall be available to the Department of Health and Human Services and the State Department of Education for inspection and copying. The medication administration records shall include information and data the departments require by rules and regulations adopted under the Medication Aide Act.

Source: Laws 1998, LB 1354, § 14; Laws 2007, LB296, § 664.
Operative date July 1, 2007.

71-6725 Minimum standards for competencies. (1) The minimum competencies for a medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school shall include (a) maintaining confidentiality, (b) complying with a recipient's right to refuse to take medication, (c) maintaining hygiene and current accepted standards for infection control, (d) documenting accurately and completely, (e) providing medications according to the five rights, (f) having the ability to understand and follow instructions, (g) practicing safety in application of medication procedures, (h) complying with limitations and conditions under which a medication aide may provide medications, and (i) having an awareness of abuse and neglect reporting requirements and any other areas as shall be determined by rules or regulations.

(2) The Department of Health and Human Services shall adopt and promulgate rules and regulations setting minimum standards for competencies listed in subsection (1) of this section and methods for competency assessment of medication aides. The Department of Health and Human Services shall adopt and promulgate rules and regulations setting methods for competency assessment of the person licensed to operate a child care facility or staff of child care facilities. The State Department of Education shall adopt and promulgate rules and regulations setting methods for competency assessment of the school staff member.

(3) A medication aide (except one who is employed by a nursing home, an intermediate care facility for the mentally retarded, or an assisted-living facility), a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school shall not be required to take a course. The medication aide shall be assessed to determine that the medication aide has the competencies listed in subsection (1) of this section.

(4) A medication aide providing services in an assisted-living facility as defined in section 71-406, a nursing home, or an intermediate care facility for the mentally retarded shall be required to have completed a forty-hour course on the competencies listed in subsection (1) of this section and competency standards established through rules and regulations as provided for in subsection (2) of this section, except that a medication aide who has, prior to January 1, 2003, completed a twenty-hour course and passed an examination developed and administered by the Department of Health and Human Services may complete a second

twenty-hour course supplemental to the first twenty-hour course in lieu of completing the forty-hour course. The department shall adopt and promulgate rules and regulations regarding the procedures and criteria for curriculum. Competency assessment shall include passing an examination developed and administered by the department. Criteria for establishing a passing standard for the examination shall be established in rules and regulations.

(5) Medication aides providing services in nursing homes or intermediate care facilities for the mentally retarded shall also meet the requirements set forth in section 71-6039.

Source: Laws 1998, LB 1354, § 15; Laws 2000, LB 819, § 139; Laws 2002, LB 1021, § 103; Laws 2007, LB296, § 665.
Operative date July 1, 2007.

71-6726 Medication aide; registration; qualifications; report of conviction required; licensure as nurse; effect. (1) To register as a medication aide, an individual shall (a) have successfully completed the requirements in section 71-6725, (b) be at least eighteen years of age, (c) be of good moral character, (d) file an application with the department, and (e) pay the applicable fee.

(2) A registered nurse or licensed practical nurse whose license has been revoked, suspended, or voluntarily surrendered in lieu of discipline may not register as a medication aide.

(3) An applicant or medication aide shall report to the department, in writing, any conviction for a felony or misdemeanor. A conviction is not a disqualification for placement on the registry unless it relates to the standards identified in section 71-6725 or it reflects on the moral character of the applicant or medication aide.

(4) An applicant or medication aide may report any pardon or setting aside of a conviction to the department. If a pardon or setting aside has been obtained, the conviction for which it was obtained shall not be maintained on the Medication Aide Registry.

(5) If a person registered as a medication aide on the Medication Aide Registry becomes licensed as a registered nurse or licensed practical nurse, his or her registration as a medication aide becomes null and void as of the date of licensure.

Source: Laws 1998, LB 1354, § 16; Laws 2007, LB185, § 44; Laws 2007, LB463, § 1287.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 185, section 44, with LB 463, section 1287, to reflect all amendments.

Note: The changes made by LB 185 became operative September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-6727 Medication Aide Registry; contents. (1) The department shall list each medication aide registration in the Medication Aide Registry as a Medication Aide-40-Hour, Medication Aide-20-Hour, or Medication Aide. A listing in the registry shall be valid for the term of the registration and upon renewal unless such listing is refused renewal or is removed as provided in section 71-6730.

(2) The registry shall contain the following information on each individual who meets the conditions in section 71-6726: (a) The individual's full name; (b) information necessary

to identify individuals, including those qualified to provide medications in nursing homes, intermediate care facilities for the mentally retarded, or assisted-living facilities; (c) any conviction of a felony or misdemeanor reported to the department; and (d) other information as the department may require by rule and regulation.

Source: Laws 1998, LB 1354, § 17; Laws 2007, LB463, § 1288.
Operative date December 1, 2008.

71-6728 Registration; renewal; fee. Registration as a medication aide shall be renewed biennially based upon competency. The department may prescribe by rule and regulation how a medication aide can show competency for purposes of renewal. Payment of the applicable fee shall be a condition of renewal. After September 1, 2007, any registration that is renewed shall expire two years after the date the registration would have expired if it had not been renewed. A medication aide who provides medication aide services prior to registration or after the date the registration expires shall be subject to the civil penalty prescribed in section 38-198.

Source: Laws 1998, LB 1354, § 18; Laws 2007, LB283, § 2; Laws 2007, LB463, § 1289.

Note: The changes made by LB 283 became effective September 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-6732 Contested actions; procedure. Except as provided by section 71-6731, an applicant or registrant who desires to contest an action or to further contest an affirmed or modified action shall do so in the manner provided in the Administrative Procedure Act for contested cases. The chief medical officer as designated in section 81-3115 shall be the decisionmaker in a contested case under this section. The hearings on a petition for judicial review of any final decision regarding an action for an alleged violation shall be set for hearing at the earliest possible date. The times for pleadings and hearings in such action shall be set by the judge of the court with the object of securing a decision at the earliest possible time.

Source: Laws 1998, LB 1354, § 22; Laws 2007, LB296, § 666.
Operative date July 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

71-6733 Reapplication authorized; lifting of sanctions. A person whose registration has been denied, refused renewal, or removed from the Medication Aide Registry may reapply for registration or for lifting of the disciplinary sanction at any time after one year has elapsed since the date such registration was denied, refused renewal, or removed from the registry, in accordance with the rules and regulations.

Source: Laws 1998, LB 1354, § 23; Laws 2007, LB185, § 45.
Operative date September 1, 2007.

71-6734 Fees. The department shall establish and collect fees for credentialing activities under the Medication Aide Act as provided in sections 38-151 to 38-157.

Source: Laws 1998, LB 1354, § 24; Laws 2002, LB 1021, § 104; Laws 2003, LB 242, § 147; Laws 2007, LB463, § 1290.
Operative date December 1, 2008.

71-6742 Eligibility for Licensee Assistance Program. Medication aides are eligible to participate in the Licensee Assistance Program as prescribed by section 38-175.

Source: Laws 1998, LB 1354, § 32; Laws 2007, LB463, § 1291.
Operative date December 1, 2008.

(c) STORAGE, HANDLING, AND DISPOSAL OF MEDICATION

71-6743 Rules and regulations. The Department of Health and Human Services may adopt and promulgate rules and regulations which shall ensure proper storage, handling, and disposal of medication in facilities and schools as defined in section 71-6721.

Source: Laws 1998, LB 1354, § 37; Laws 2007, LB296, § 667.
Operative date July 1, 2007.

ARTICLE 70

BREAST AND CERVICAL CANCER

Section.

71-7001. Terms, defined.

71-7012. Breast and Cervical Cancer Advisory Committee; established; members; appointment; terms; duties; expenses.

71-7001 Terms, defined. For purposes of sections 71-7001 to 71-7013:

- (1) Department means the Department of Health and Human Services;
- (2) Mammogram means the X-ray resulting from mammography;
- (3) Mammography means radiological examination of the breast for the purpose of obtaining a mammogram which enables a physician to assess the presence, size, location, and extent of cancerous or potentially cancerous tissue;
- (4) Mammogram supplier means a public, private, for-profit, or not-for-profit agency or health care facility that provides mammography;
- (5) Screening mammogram means the X-ray resulting from screening mammography;
- (6) Screening mammography means radiological examination of the breast of asymptomatic women for the early detection of breast cancer, which examination includes (a) a cranio-caudal and a medial lateral oblique view of each breast and (b) a licensed radiologist's interpretation of the results of the procedure. Screening mammography does not include diagnostic mammography, additional projections required for lesion definition, breast ultrasound, or any breast interventional procedure;

(7) Medical radiographer means a person licensed pursuant to section 38-1915, other than a licensed practitioner or a licensed physician assistant, who practices medical radiography under the supervision of a licensed practitioner;

(8) False negative result means a mammogram which indicates no possible cancer when a cancer exists;

(9) False positive result means a mammogram which indicates a possible cancer when none exists;

(10) Professional component means the interpretation of a screening mammogram and a written report regarding the interpretation provided by a mammogram supplier; and

(11) Technical component means a screening mammogram and all other services provided by a mammogram supplier.

Source: Laws 1991, LB 256, § 1; Laws 1995, LB 68, § 2; Laws 1995, LB 406, § 82; Laws 1996, LB 1044, § 771; Laws 1996, LB 1108, § 25; Laws 2007, LB463, § 1292.
Operative date December 1, 2008.

71-7012 Breast and Cervical Cancer Advisory Committee; established; members; appointment; terms; duties; expenses. The Breast and Cervical Cancer Advisory Committee is established. The committee consists of the members of the Mammography Screening Committee serving immediately prior to September 9, 1995, and eight additional members appointed by the chief executive officer of the department or his or her designee who have expertise or a personal interest in cervical cancer. The committee shall consist of not more than twenty-four volunteer members, at least eight of whom are women, appointed by the chief executive officer or his or her designee. Members of the committee shall be persons interested in health care, the promotion of breast cancer screening, and cervical cancer and shall be drawn from both the private sector and the public sector. At least one member shall be a person who has or who has had breast cancer, one member shall be a radiologist, and one member shall be a medical radiographer.

Of the initial members of the committee, four shall be appointed for terms of one year and four shall be appointed for terms of two years. Thereafter all appointments shall be for terms of two years. All members shall serve until their successors are appointed. No member shall serve more than two successive two-year terms. Vacancies in the membership of the committee for any cause shall be filled by appointment by the chief executive officer or his or her designee for the unexpired term.

Duties of the committee shall include, but not be limited to, recommending guidelines for the program established under section 71-7002, developing and monitoring the schedule of fees established pursuant to section 71-7009, encouraging payment of public and private funds to the Breast and Cervical Cancer Cash Fund, researching and recommending to the department reimbursement limits, planning and implementing outreach and educational programs to Nebraska women, advising the department on its operation of the early detection of breast and cervical cancer grant from the United States Department of Health and Human Services, encouraging payment of public and private funds to the fund, and researching and

recommending to the department appropriate definitive diagnostic procedures which may be reimbursed. Members of the committee shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1991, LB 256, § 12; Laws 1995, LB 68, § 10; Laws 1995, LB 406, § 84; Laws 1996, LB 1044, § 772; Laws 2007, LB296, § 668.
Operative date July 1, 2007.

ARTICLE 71

CRITICAL INCIDENT STRESS MANAGEMENT

Section.

71-7105. Critical Incident Stress Management Council; created; members; duties.

71-7107. Department of Health and Human Services; duties.

71-7110. Critical incident stress management region; regional management committee; membership; regional clinical director; duties.

71-7105 Critical Incident Stress Management Council; created; members; duties. There is hereby created the Critical Incident Stress Management Council. The council shall be composed of two representatives of the Department of Health and Human Services, the State Fire Marshal, the Superintendent of Law Enforcement and Public Safety, and the Adjutant General as director of the Nebraska Emergency Management Agency. The council shall specify the organizational and operational goals for the program and shall provide overall policy direction for the program.

Source: Laws 1991, LB 703, § 5; Laws 1996, LB 1044, § 773; Laws 1997, LB 184, § 5; Laws 2007, LB296, § 669.
Operative date July 1, 2007.

71-7107 Department of Health and Human Services; duties. The Department of Health and Human Services shall be the lead agency for the program. The department shall:

- (1) Provide office support to program activities;
- (2) Provide necessary equipment for the program and participants;
- (3) Provide staff support to the council;
- (4) Adopt and promulgate rules and regulations to implement the program;
- (5) Recruit hospital personnel and emergency medical workers to be trained as critical incident stress management peers;
- (6) Participate in the training and continuing education of such peers and mental health professionals; and
- (7) Appoint a director for the program who shall be an employee of the department and shall be the chairperson of the committee.

Source: Laws 1991, LB 703, § 7; Laws 1996, LB 1044, § 774; Laws 1997, LB 184, § 7; Laws 2007, LB296, § 670.
Operative date July 1, 2007.

71-7110 Critical incident stress management region; regional management committee; membership; regional clinical director; duties. Each critical incident stress management region shall have a regional management committee composed of representatives of the Department of Health and Human Services, the State Fire Marshal, and the Nebraska State Patrol and a regional clinical director. The regional clinical director shall have a graduate degree in a mental health discipline. The regional management committee shall be responsible for the implementation and coordination of the program in the region according to the specifications developed by the council and Interagency Management Committee. The regional management committee shall develop critical incident stress management teams to facilitate the stress management process.

Source: Laws 1991, LB 703, § 10; Laws 1996, LB 1044, § 776; Laws 1997, LB 184, § 10; Laws 2007, LB296, § 671.
Operative date July 1, 2007.

ARTICLE 74

WHOLESALE DRUG DISTRIBUTOR LICENSING

Section.

- 71-7427. Act, how cited.
- 71-7434. Department, defined.
- 71-7436. Emergency medical reasons, defined.
- 71-7438. Manufacturer, defined.
- 71-7450. Fees.
- 71-7454. Prescription drugs; restrictions on transfer; exceptions.
- 71-7457. License; denied, refused renewal, suspended, limited, or revoked; grounds.
- 71-7460.01. Reporting and investigation duties.
- 71-7460.02. Health care facility; peer review organization, or professional association; duty to report; confidentiality; immunity; failure to report; civil penalty.
- 71-7460.03. Insurer; duty to report; contents.
- 71-7460.04. Clerk of county or district court; duty to report conviction or judgment; Attorney General or city or county prosecutor; provide information.

71-7427 Act, how cited. Sections 71-7427 to 71-7463 shall be known and may be cited as the Wholesale Drug Distributor Licensing Act.

Source: Laws 1992, LB 1019, § 1; R.S.1943, (2003), § 71-7401; Laws 2006, LB 994, § 1; Laws 2007, LB463, § 1293.
Operative date December 1, 2008.

71-7434 Department, defined. Department means the Department of Health and Human Services.

Source: Laws 1992, LB 1019, § 7; Laws 1996, LB 1044, § 778; R.S.1943, (2003), § 71-7407; Laws 2006, LB 994, § 8; Laws 2007, LB296, § 672.
Operative date July 1, 2007.

71-7436 Emergency medical reasons, defined. Emergency medical reasons means the alleviation of a temporary shortage by transfers of prescription drugs between any of the following: (1) Holders of pharmacy licenses, (2) health care practitioner facilities as defined in section 71-414, (3) hospitals as defined in section 71-419, and (4) practitioners as defined in section 38-2838.

Source: Laws 1992, LB 1019, § 9; Laws 1998, LB 1073, § 157; Laws 2001, LB 398, § 82; R.S.1943, (2003), § 71-7409; Laws 2006, LB 994, § 10; Laws 2007, LB463, § 1294.
Operative date December 1, 2008.

71-7438 Manufacturer, defined. Manufacturer means any entity engaged in manufacturing, preparing, propagating, processing, packaging, repackaging, or labeling a prescription drug.

Source: Laws 1992, LB 1019, § 10; R.S.1943, (2003), § 71-7410; Laws 2006, LB 994, § 12; Laws 2007, LB247, § 55.
Operative date June 1, 2007.

71-7450 Fees. (1) Licensure activities under the Wholesale Drug Distributor Licensing Act shall be funded by license fees. An applicant for an initial or renewal license under the act shall pay a license fee as provided in this section.

(2) License fees shall include (a) a base fee of fifty dollars and (b) an additional fee of not more than five hundred dollars based on variable costs to the department of inspections and of receiving and investigating complaints, other similar direct and indirect costs, and other relevant factors as determined by the department.

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

(4) The department shall also collect a fee for reinstatement of a license that has lapsed or has been suspended or revoked. The department shall collect a fee of ten dollars for a duplicate original license.

(5) The department shall remit all license fees collected under this section to the State Treasurer for credit to the Health and Human Services Cash Fund. License fees collected under this section shall only be used for activities related to the licensure of wholesale drug distributors.

Source: Laws 2006, LB 994, § 24; Laws 2007, LB296, § 673.
Operative date July 1, 2007.

71-7454 Prescription drugs; restrictions on transfer; exceptions. (1) No wholesale drug distributor, manufacturer, or pharmacy shall knowingly purchase or receive any prescription drug from any source other than a person or entity licensed under the Wholesale Drug Distributor Licensing Act except transfers for emergency medical reasons, the gross dollar value of which shall not exceed five percent of the total prescription drug sales revenue of the transferor or transferee holder of a pharmacy license or practitioner as defined in section

38-2838 during the immediately preceding calendar year, and except as otherwise provided in the act.

(2) A wholesale drug distributor may receive returns or exchanges of prescription drugs from a pharmacy, chain pharmacy warehouse, health care practitioner facility as defined in section 71-414, or hospital as defined in section 71-419 pursuant to the terms and conditions agreed upon between such wholesale drug distributor and such pharmacy, chain pharmacy warehouse, health care practitioner facility, or hospital. Such returns and exchanges shall not be subject to sections 71-7455 to 71-7457. A wholesale drug distributor shall not receive from a pharmacy, chain pharmacy warehouse, health care practitioner facility, or hospital an amount or quantity of a prescription drug greater than the amount or quantity that was originally sold by the wholesale drug distributor to such pharmacy, chain pharmacy warehouse, health care practitioner facility, or hospital.

(3) A manufacturer or wholesale drug distributor shall furnish prescription drugs only to persons licensed by the department and shall verify such licensure before furnishing prescription drugs to a person not known to the manufacturer or wholesale drug distributor.

(4) Prescription drugs furnished by a manufacturer or wholesale drug distributor shall be delivered only to the premises listed on the license, except that a manufacturer or wholesale drug distributor may furnish prescription drugs to a person licensed by the department or his or her agent at the premises of the manufacturer or wholesale drug distributor if:

(a) The identity and authorization of the recipient is properly established; and

(b) This method of receipt is employed only to meet the prescription drug needs of a particular patient of the person licensed by the department.

(5) Prescription drugs may be furnished to a hospital pharmacy receiving area. Receipt of such drugs shall be acknowledged by written receipt signed by a pharmacist or other authorized personnel. The receipt shall contain the time of delivery and the type and quantity of the prescription drug received. Any discrepancy between the signed receipt and the type and quantity of prescription drug actually received shall be reported by the receiving authorized pharmacy personnel to the delivering manufacturer or wholesale drug distributor by the next business day after the delivery to the pharmacy receiving area.

(6) A manufacturer or wholesale drug distributor shall only accept payment or allow the use of credit to establish an account for the purchase of prescription drugs from the owner or owners of record, the chief executive officer, or the chief financial officer listed on the license of a person or entity legally authorized to receive prescription drugs. Any account established for the purchase of prescription drugs shall bear the name of such licensee.

Source: Laws 1992, LB 1019, § 16; Laws 1998, LB 1073, § 158; Laws 2001, LB 398, § 83; R.S.1943, (2003), § 71-7416; Laws 2006, LB 994, § 28; Laws 2007, LB463, § 1295.
Operative date December 1, 2008.

71-7457 License; denied, refused renewal, suspended, limited, or revoked; grounds. (1) A wholesale drug distributor license may be denied, refused renewal, suspended, limited, or revoked by the department when the department finds that the applicant

or licensee has violated any provisions of the Wholesale Drug Distributor Licensing Act or of the rules and regulations adopted and promulgated under the act or has committed any acts or offenses set forth in section 38-178, 38-179, or 71-7459. All actions and proceedings shall be carried out as specified in sections 38-177 to 38-1,115.

(2) For purposes of this section, applicant or licensee includes, but is not limited to, the board of directors, chief executive officer, and other officers of the applicant or the entity to which the license is issued and the manager of each site if more than one site is located in this state.

Source: Laws 1992, LB 1019, § 23; Laws 1994, LB 1223, § 79; Laws 1996, LB 1044, § 779; R.S.1943, (2003), § 71-7423; Laws 2006, LB 994, § 31; Laws 2007, LB296, § 674; Laws 2007, LB463, § 1296.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 674, with LB 463, section 1296, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

71-7460.01 Reporting and investigation duties. Every wholesale drug distributor licensed under the Wholesale Drug Distributor Licensing Act shall be subject to and comply with sections 38-1,124 to 38-1,126 relating to reporting and investigations.

Source: Laws 2007, LB463, § 1297.
Operative date December 1, 2008.

71-7460.02 Health care facility; peer review organization, or professional association; duty to report; confidentiality; immunity; failure to report; civil penalty. (1) A health care facility licensed under the Health Care Facility Licensure Act or a peer review organization or professional association relating to a profession regulated under the Wholesale Drug Distributor Licensing Act shall report to the department, on a form and in the manner specified by the department, any facts known to the facility, organization, or association, including, but not limited to, the identity of the credential holder and consumer, when the facility, organization, or association:

(a) Has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a licensee, including settlements made prior to suit, arising out of the acts or omissions of the licensee; or

(b) Takes action adversely affecting the privileges or membership of a licensee in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment.

The report shall be made within thirty days after the date of the action or event.

(2) A report made to the department under this section shall be confidential. The facility, organization, association, or person making such report shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. Nothing in this subsection shall be construed to require production of records protected by

section 25-12,123, 71-2048, or 71-7903 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in any of such sections or such act.

(3) Any health care facility, peer review organization, or professional association that fails or neglects to make a report or provide information as required under this section is subject to a civil penalty of five hundred dollars for the first offense and a civil penalty of up to one thousand dollars for a subsequent offense. Any civil penalty collected under this subsection shall be remitted to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

(4) For purposes of this section, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as the act existed on January 1, 2007, and may require a supplemental report to the extent such reports do not contain the information required by the department.

Source: Laws 2007, LB463, § 1298.
Operative date December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.
Nebraska Hospital-Medical Liability Act, see section 44-2855.
Patient Safety Improvement Act, see section 71-8701.

71-7460.03 Insurer; duty to report; contents. (1) Unless such knowledge or information is based on confidential medical records protected by the confidentiality provisions of the federal Public Health Services Act, 42 U.S.C. 290dd-2, and federal administrative rules and regulations, as such act and rules and regulations existed on January 1, 2007:

(a) Any insurer having knowledge of any violation of any provision of the Wholesale Drug Distributor Licensing Act governing the profession of the person being reported whether or not such person is licensed shall report the facts of such violation as known to such insurer to the department; and

(b) All insurers shall cooperate with the department and provide such information as requested by the department concerning any possible violations by any person required to be licensed whether or not such person is licensed.

(2) Such reporting shall be done on a form and in the manner specified pursuant to sections 38-1,130 and 38-1,131. Such reports shall be subject to sections 38-1,132 to 38-1,136.

Source: Laws 2007, LB463, § 1299.
Operative date December 1, 2008.

71-7460.04 Clerk of county or district court; duty to report conviction or judgment; Attorney General or city or county prosecutor; provide information. The clerk of any county or district court in this state shall report to the department the conviction of any person licensed by the department under the Wholesale Drug Distributor Licensing Act of any felony

or of any misdemeanor involving the use, sale, distribution, administration, or dispensing of a controlled substance, alcohol or chemical impairment, or substance abuse and shall also report a judgment against any such licensee arising out of a claim of professional liability. The Attorney General or city or county prosecutor prosecuting any such criminal action and plaintiff in any such civil action shall provide the court with information concerning the license of the defendant or party. Notice to the department shall be filed within thirty days after the date of conviction or judgment in a manner agreed to by the Director of Public Health of the Division of Public Health and the State Court Administrator.

Source: Laws 2007, LB463, § 1300.
Operative date December 1, 2008.

ARTICLE 76

HEALTH CARE

(a) HEALTH CARE ACCESS AND REFORM

Section.

71-7603. Department of Health and Human Services; annual report; contents.

(b) NEBRASKA HEALTH CARE FUNDING ACT

71-7606. Purpose of act; restrictions on use of funds; report.

71-7607. Nebraska Medicaid Intergovernmental Trust Fund; created; use; investment.

71-7608. Nebraska Tobacco Settlement Trust Fund; created; use; investment.

71-7611. Nebraska Health Care Cash Fund; created; use; investment.

71-7614. Nebraska Health Care Council; created; duties; grants from the Nebraska Health Care Cash Fund; department; duties.

(c) NATIVE AMERICAN PUBLIC HEALTH ACT

71-7617. Contracts to provide educational and public health services; Department of Health and Human Services; duties.

71-7618. Funding of contracts; priority.

71-7619. Aid to tribal councils.

71-7620. Recipients; reports.

71-7621. Recapture of funds.

71-7622. Rules and regulations.

(a) HEALTH CARE ACCESS AND REFORM

71-7603 Department of Health and Human Services; annual report; contents. The Department of Health and Human Services shall annually report to the Governor and the Legislature on the status of health care expenditures in Nebraska. Such report shall also address the access of Nebraskans to health care services, issues related to quality assurance, differences in the health care status of persons in different parts of Nebraska, changes needed in the education of health care personnel in Nebraska, and recommendations for improvements in the health care delivery system generally.

Source: Laws 1994, LB 1223, § 127; Laws 1996, LB 1044, § 785; Laws 2007, LB296, § 675.
Operative date July 1, 2007.

(b) NEBRASKA HEALTH CARE FUNDING ACT

71-7606 Purpose of act; restrictions on use of funds; report. (1) The purpose of the Nebraska Health Care Funding Act is to provide for the use of dedicated revenue for health-care-related expenditures.

(2) Any funds appropriated or distributed under the act shall not be considered ongoing entitlements or obligations on the part of the State of Nebraska and shall not be used to replace existing funding for existing programs.

(3) No funds appropriated or distributed under the act shall be used for abortion, abortion counseling, referral for abortion, school-based health clinics, or research or activity of any kind involving the use of human fetal tissue obtained in connection with the performance of an induced abortion or involving the use of human embryonic stem cells or for the purpose of obtaining other funding for such use.

(4) The Department of Health and Human Services shall report annually to the Legislature and the Governor regarding the use of funds appropriated under the act and the outcomes achieved from such use.

Source: Laws 1998, LB 1070, § 2; Laws 2000, LB 1427, § 3; Laws 2001, LB 692, § 14; Laws 2003, LB 412, § 4; Laws 2007, LB296, § 676.
Operative date July 1, 2007.

71-7607 Nebraska Medicaid Intergovernmental Trust Fund; created; use; investment. (1) The Nebraska Medicaid Intergovernmental Trust Fund is created. The fund shall include revenue received from governmental nursing facilities receiving payments for nursing facility services under the medical assistance program established pursuant to the Medical Assistance Act. The Department of Health and Human Services shall remit such revenue to the State Treasurer for credit to the fund. The department shall adopt and promulgate rules and regulations to establish procedures for participation by governmental nursing facilities and for the receipt of such revenue under this section. Money from the Nebraska Medicaid Intergovernmental Trust Fund shall be transferred to the Nebraska Health Care Cash Fund as provided in section 71-7611.

(2) The department may use revenue in the Nebraska Medicaid Intergovernmental Trust Fund to offset any unanticipated reductions in medicaid funds received under this section.

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

Source: Laws 1998, LB 1070, § 3; Laws 2000, LB 1427, § 5; Laws 2001, LB 541, § 4; Laws 2001, LB 692, § 15; Laws 2001, Spec. Sess., LB 3, § 3; Laws 2003, LB 412, § 5; Laws 2004, LB 1091, § 5; Laws 2006, LB 1061, § 10; Laws 2006, LB 1248, § 79; Laws 2007, LB296, § 677.
Operative date July 1, 2007.

Cross Reference

Medical Assistance Act, see section 68-901.

Nebraska Capital Expansion Act, see section 72-1269.

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

71-7608 Nebraska Tobacco Settlement Trust Fund; created; use; investment. The Nebraska Tobacco Settlement Trust Fund is created. The fund shall include any settlement payments or other revenue received by the State of Nebraska in connection with any tobacco-related litigation to which the State of Nebraska is a party. The Department of Health and Human Services shall remit such revenue to the State Treasurer for credit to the fund, except that of such revenue received on or after April 1, 2005, two million five hundred thousand dollars shall be credited annually to the Tobacco Prevention and Control Cash Fund. Subject to the terms and conditions of such litigation, money from the Nebraska Tobacco Settlement Trust Fund shall be transferred to the Nebraska Health Care Cash Fund as provided in section 71-7611. Any money in the Nebraska Tobacco Settlement Trust Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1998, LB 1070, § 4; Laws 1999, LB 324, § 3; Laws 2000, LB 1427, § 6; Laws 2000, LB 1436, § 1; Laws 2001, LB 692, § 16; Laws 2003, LB 412, § 6; Laws 2004, LB 1091, § 6; Laws 2007, LB296, § 678.
Operative date July 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.

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

71-7611 Nebraska Health Care Cash Fund; created; use; investment. (1) The Nebraska Health Care Cash Fund is created. The State Treasurer shall transfer fifty-five million dollars annually no later than July 15 from the Nebraska Medicaid Intergovernmental Trust Fund and the Nebraska Tobacco Settlement Trust Fund to the Nebraska Health Care Cash Fund. The state investment officer upon consultation with the Nebraska Investment Council shall advise the State Treasurer on the amounts to be transferred from the Nebraska Medicaid Intergovernmental Trust Fund and from the Nebraska Tobacco Settlement Trust Fund under this section in order to sustain such transfers in perpetuity. The state investment officer shall report to the Legislature on or before October 1 of every even-numbered year on the sustainability of such transfers.

(2) Any money in the Nebraska Health Care Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(3) One million dollars in the Nebraska Health Care Cash Fund is designated each year for the Autism Treatment Program Act for five fiscal years beginning in fiscal year 2007-08 and shall be distributed in each fiscal year as follows: (a) First, to the Department of Health and Human Services for costs related to application and implementation of the waiver; (b) second, to the department for other medical costs for children who would not otherwise qualify for medicaid except for the waiver; and (c) third, the balance to the Autism Treatment

Program Cash Fund. The State Treasurer shall transfer the balance of the funding to the Autism Treatment Program Cash Fund based on the estimated costs of administrative and other medical costs as determined by the Legislature through the appropriation process. The transfers to the Autism Treatment Program Cash Fund in any fiscal year shall be contingent upon the receipt of private matching funds under the Autism Treatment Program Act, with no less than one dollar of private funds received for every two dollars transferred from the Nebraska Health Care Cash Fund to the Autism Treatment Program Cash Fund.

(4) The University of Nebraska and postsecondary educational institutions having colleges of medicine in Nebraska and their affiliated research hospitals in Nebraska, as a condition of receiving any funds appropriated or transferred from the Nebraska Health Care Cash Fund, shall not discriminate against any person on the basis of sexual orientation.

Source: Laws 1998, LB 1070, § 7; Laws 2000, LB 1427, § 9; Laws 2001, LB 692, § 18; Laws 2003, LB 412, § 8; Laws 2004, LB 1091, § 7; Laws 2005, LB 426, § 12; Laws 2007, LB322, § 19; Laws 2007, LB482, § 6.
Operative date July 1, 2007.

Note: This section was amended by LB 322, section 19, and LB 482, section 6, was not correlated as a part of the normal legislative process, and the amendments were not entirely reconcilable and were in conflict with each other. The Revisor of Statutes has pursuant to section 49-770 printed the version from LB 482 as this was the latest version to pass the Legislature.

Cross Reference

Autism Treatment Program Act, see section 85-1,138.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-7614 Nebraska Health Care Council; created; duties; grants from the Nebraska Health Care Cash Fund; department; duties. (1) The Nebraska Health Care Council is created. The council shall consist of a chairperson and eight additional members appointed by the Governor with the approval of a majority of the Legislature. The members shall be appointed for staggered three-year terms. The council shall include at least one consumer, one health care provider, and one member of a racial or ethnic minority. The chief executive officer of the Department of Health and Human Services or his or her designee shall be a nonvoting, ex officio member of the council. Any vacancy shall be filled in the same manner as the original appointment for the unexpired term. Members of the council shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The department shall provide staff support for the council and shall assist the council as may be necessary.

(2) Funds as appropriated by the Legislature from the Nebraska Health Care Cash Fund shall be used for grants awarded by the council for public health purposes as defined by the council and adopted in rules and regulations of the department. At least fifteen percent of the funds appropriated for such grants shall be awarded by the council to improve racial and ethnic minority health. Grants awarded under this section shall not exceed three years in duration, except that extensions of up to one year may be granted by the council for good

cause. The council shall report all such extensions to the department and to the Health and Human Services Committee of the Legislature.

(3) The department shall:

(a) In consultation with the council, develop criteria for the awarding of grants from the fund pursuant to this section;

(b) Approve or disapprove decisions by the council regarding the selection of projects to be funded and the distribution of project funding;

(c) In consultation with the council, establish standards, formats, procedures, and timelines for the successful implementation of approved projects;

(d) In consultation with the council, assist grant recipients in determining the effectiveness of the project and measure the accomplishment of the grant objectives;

(e) Provide annual reports to the Governor and the Legislature concerning the projects. Each report shall include a listing of priorities established by the council for grants awarded under this section, the number of applicants and approved applicants for such grants, an overview of the various funded projects, and detailed reports of the cost of such projects;

(f) In consultation with the council, adopt and promulgate rules and regulations establishing criteria, standards, and procedures regarding the selection and administration of funded projects; and

(g) Require recipients of grants under this section to provide such data relating to the funded projects as the department deems necessary.

Source: Laws 1998, LB 1070, § 10; Laws 1999, LB 115, § 4; Laws 1999, LB 324, § 5; Laws 2000, LB 1427, § 10; Laws 2000, LB 1436, § 2; Laws 2001, LB 209, § 33; Laws 2001, LB 692, § 19; Laws 2003, LB 412, § 9; Laws 2007, LB296, § 679.
Operative date July 1, 2007.

(c) NATIVE AMERICAN PUBLIC HEALTH ACT

71-7617 Contracts to provide educational and public health services; Department of Health and Human Services; duties. The Department of Health and Human Services shall contract with the health clinics of Nebraska's federally recognized Native American tribes, Indian health organizations, or other public health organizations that have a substantial Native American clientele to provide educational and public health services targeted to Native American populations. The following educational and public health services may be considered by the department for such contracts:

(1) Identification and enrollment of children in state and federal programs providing access to health insurance or health care;

(2) Efforts to educate children and adults about the health risks associated with smoking and tobacco use, alcohol abuse, and other substances that threaten health and well-being and other activities designed to reduce the rate of substance abuse;

(3) Prenatal care education for women and notification of programs that improve prenatal care;

(4) Education focusing on proper diet and the importance of physical activity to good health;

(5) Blood pressure and cholesterol screenings;

- (6) Support of efforts to identify children and adults at risk for depression and other mental health conditions and provide mental health counseling to prevent suicide;
- (7) Parenting classes and the promotion of such programs;
- (8) Efforts to discourage drinking and driving and to encourage the use of seat belts;
- (9) Tests and education for acquired immunodeficiency syndrome and other sexually transmitted diseases;
- (10) Tests for pregnancy and referrals to prenatal care when directed;
- (11) Educational efforts aimed at reducing teen pregnancies and other unintended pregnancies;
- (12) Case management for pregnant women, children, or adults with special health care needs;
- (13) Efforts to make health care prevention services more affordable or accessible;
- (14) Matching funds for state and federal programs designed to address public health needs;
- (15) Staffing needs for public health services or education including the recruitment and training of Native American providers;
- (16) Cervical and breast cancer detection services and other prevention components of comprehensive women's health services;
- (17) Education to prevent and reduce the occurrence of diabetes; and
- (18) Other prevention or educational activities or programs that address the health, safety, or self-sufficiency of Native American persons.

Source: Laws 1998, LB 1070, § 13; Laws 2005, LB 301, § 57; Laws 2007, LB296, § 680.
Operative date July 1, 2007.

71-7618 Funding of contracts; priority. During each fiscal year, the Department of Health and Human Services shall contract with the health clinics of Nebraska's federally recognized Native American tribes as approved by the tribal councils, Indian health organizations, or other public health organizations that have a substantial Native American clientele to provide educational and public health services pursuant to section 71-7617. The department shall fund all eligible contracts until the appropriation to this program is depleted, but shall give priority to contracts which meet the following criteria:

- (1) Programs or activities that directly impact the health and well-being of children;
- (2) Programs or activities which serve the greater number of people over the longest period of time;
- (3) Programs or activities that are part of a larger plan for strategic public health planning and implementation;
- (4) Current programs or activities that have demonstrated success in improving public health or new programs or activities modeled on successful programs and activities; and
- (5) Programs or activities that focus on primary prevention and show promise in reducing future health care expenditures.

Source: Laws 1998, LB 1070, § 14; Laws 2005, LB 301, § 58; Laws 2007, LB296, § 681.
Operative date July 1, 2007.

71-7619 Aid to tribal councils. The Department of Health and Human Services shall provide technical assistance and assessment of needs evaluations upon request to aid tribal councils in the development of contract proposals.

Source: Laws 1998, LB 1070, § 15; Laws 2005, LB 301, § 59; Laws 2007, LB296, § 682.
Operative date July 1, 2007.

71-7620 Recipients; reports. The recipients of funds under the Native American Public Health Act shall submit a report on the activities funded each fiscal year. The report shall provide information as required by the Department of Health and Human Services to determine the effectiveness of the contract in meeting the goals of the Native American Public Health Act.

Source: Laws 1998, LB 1070, § 16; Laws 2005, LB 301, § 60; Laws 2007, LB296, § 683.
Operative date July 1, 2007.

71-7621 Recapture of funds. If the Department of Health and Human Services determines that services are not being delivered in accordance with the contract, the department may seek to recapture all or a portion of funds expended.

Source: Laws 1998, LB 1070, § 17; Laws 2005, LB 301, § 61; Laws 2007, LB296, § 684.
Operative date July 1, 2007.

71-7622 Rules and regulations. The Department of Health and Human Services shall adopt and promulgate rules and regulations to carry out the Native American Public Health Act and shall adhere to already established or adopted and promulgated rules and regulations for contracted services under the act.

Source: Laws 1998, LB 1070, § 18; Laws 2005, LB 301, § 62; Laws 2007, LB296, § 685.
Operative date July 1, 2007.

ARTICLE 77

HEALTH CARE FACILITY-PROVIDER COOPERATION

Section.

71-7702. Terms, defined.

71-7702 Terms, defined. For purposes of the Health Care Facility-Provider Cooperation Act:

(1) Community planning means a plan which identifies (a) health-care-related resources, facilities, and services within the community, (b) the health care needs of the community, (c) gaps in services, (d) duplication of services, and (e) ways to meet health care needs;

(2) Cooperative agreement means an agreement among two or more health care facilities or other providers for the sharing, allocation, or referral of patients, personnel, instructional

programs, equipment, support services and facilities, or medical, diagnostic, or laboratory facilities or procedures or other services traditionally offered or purchased by health care facilities or other providers;

(3) Department means the Department of Health and Human Services;

(4) Health care facility means:

(a) Any facility required to be licensed under the Health Care Facility Licensure Act or, if in another state, licensed in such state; and

(b) Any parent of a health care facility, health care facility subsidiary, or health care facility affiliate that provides medical or medically related diagnostic and laboratory services or engages in ancillary activities supporting those services; and

(5) Provider means any person licensed to provide health care services under the Uniform Credentialing Act and engaged in the practice of medicine and surgery, osteopathic medicine, pharmacy, optometry, podiatry, physical therapy, or nursing.

Source: Laws 1994, LB 1223, § 112; Laws 1996, LB 1044, § 786; Laws 2000, LB 819, § 144; Laws 2007, LB296, § 686; Laws 2007, LB463, § 1301.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 686, with LB 463, section 1301, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

Uniform Credentialing Act, see section 38-101.

ARTICLE 79

PEER REVIEW COMMITTEES

Section.

71-7901. Health clinic; medical care organization or association; peer review committee authorized.

71-7901 Health clinic; medical care organization or association; peer review committee authorized. Any health clinic as defined in section 71-416 and any other organization or association of health practitioners or providers licensed pursuant to the Uniform Credentialing Act may cause a peer review committee to be formed and operated or may contract with an outside peer review committee for the purpose of reviewing, from time to time, the medical care provided by such health clinic, organization, or association and for assisting individual practitioners or providers practicing in such clinics, organizations, or associations in maintaining and providing a high standard of medical care.

Source: Laws 1997, LB 222, § 1; Laws 2000, LB 819, § 145; Laws 2007, LB463, § 1302. Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

ARTICLE 80

CERTIFIED INDUSTRIAL HYGIENIST TITLE PROTECTION ACT

Section.

71-8008. Department of Health and Human Services; rules and regulations.

71-8008 Department of Health and Human Services; rules and regulations. The Department of Health and Human Services may adopt and promulgate rules and regulations to implement the Certified Industrial Hygienist Title Protection Act and to further regulate the use of the term certified industrial hygienist.

Source: Laws 1997, LB 558, § 8; Laws 2007, LB296, § 687.
Operative date July 1, 2007.

ARTICLE 82

STATEWIDE TRAUMA SYSTEM ACT

Section.

71-8211. Department, defined.

71-8228. Regional medical director, defined.

71-8231. State trauma medical director, defined.

71-8236. State Trauma Advisory Board; created; members; terms; expenses.

71-8239. Statewide trauma system; established; rules and regulations; state trauma medical director and regional medical directors; appointment.

71-8249. Statewide trauma registry; data; confidentiality.

71-8252. Regional trauma advisory boards; powers and duties.

71-8253. Act; how construed.

71-8211 Department, defined. Department means the Division of Public Health of the Department of Health and Human Services.

Source: Laws 1997, LB 626, § 11; Laws 2007, LB296, § 688.
Operative date July 1, 2007.

71-8228 Regional medical director, defined. Regional medical director means a physician licensed under the Uniform Credentialing Act who shall report to the Director of Public Health and carry out the regional plan for his or her region.

Source: Laws 1997, LB 626, § 28; Laws 1999, LB 594, § 62; Laws 2007, LB296, § 689; Laws 2007, LB463, § 1303.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 689, with LB 463, section 1303, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

71-8231 State trauma medical director, defined. State trauma medical director means a physician licensed under the Uniform Credentialing Act who reports to the Director of Public Health and carries out duties under the Statewide Trauma System Act.

Source: Laws 1997, LB 626, § 31; Laws 1999, LB 594, § 63; Laws 2007, LB296, § 690; Laws 2007, LB463, § 1304.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 690, with LB 463, section 1304, to reflect all amendments.

Note: The changes made by LB 296 became operative July 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

71-8236 State Trauma Advisory Board; created; members; terms; expenses. The State Trauma Advisory Board is created. The board shall be composed of representatives knowledgeable in emergency medical services and trauma care, including emergency medical providers such as physicians, nurses, hospital personnel, prehospital or out-of-hospital providers, local government officials, state officials, consumers, and persons affiliated professionally with health science schools. The Director of Public Health or his or her designee shall appoint the members of the board for staggered terms of three years each. The department shall provide administrative support to the board. All members of the board may be reimbursed for their actual and necessary expenses incurred in the performance of their duties as such members as provided in sections 81-1174 to 81-1177. The terms of members representing the same field shall not expire at the same time.

The board shall elect a chairperson and a vice-chairperson whose terms of office shall be for two years. The board shall meet at least twice per year by written request of the director or the chairperson.

Source: Laws 1997, LB 626, § 36; Laws 1998, LB 898, § 1; Laws 1999, LB 594, § 64; Laws 2007, LB296, § 691.
Operative date July 1, 2007.

71-8239 Statewide trauma system; established; rules and regulations; state trauma medical director and regional medical directors; appointment. (1) The department, in consultation with and having solicited the advice of the State Trauma Advisory Board, shall establish the statewide trauma system.

(2) The department, with the advice of the board, shall adopt and promulgate rules and regulations to carry out the Statewide Trauma System Act.

(3) The Director of Public Health or his or her designee shall appoint the state trauma medical director and the regional medical directors.

Source: Laws 1997, LB 626, § 39; Laws 2007, LB296, § 692.
Operative date July 1, 2007.

71-8249 Statewide trauma registry; data; confidentiality. (1) All data collected under section 71-8248 shall be held confidential pursuant to sections 81-663 to 81-675. Confidential patient medical record data shall only be released as (a) Class I, II, or IV medical records under sections 81-663 to 81-675, (b) aggregate data to the regional trauma system quality assurance program and the regional trauma advisory boards, (c) as protected health information to a public health authority, as such terms are defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2007, and (d) as protected health information, as defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2007, to an emergency medical service, to an out-of-hospital emergency care provider, to a licensed health care facility, or to a center that will treat or has treated a specific patient.

A record may be shared with the emergency medical service, the out-of-hospital emergency provider, the licensed health care facility, or center that reported that specific record.

(2) Patient care quality assurance proceedings, records, and reports developed pursuant to this section and section 71-8248 are confidential and are not subject to discovery by subpoena or admissible as evidence in any civil action, except pursuant to a court order which provides for the protection of sensitive information of interested parties, including the department, pursuant to section 25-12,123.

Source: Laws 1997, LB 626, § 49; Laws 2007, LB185, § 46.
Operative date September 1, 2007.

71-8252 Regional trauma advisory boards; powers and duties. The regional trauma advisory boards:

(1) Shall advise the department on matters relating to the delivery of trauma care services within the trauma care region;

(2) Shall evaluate data and provide analysis required by the department to assess the effectiveness of the statewide trauma system; and

(3) May apply for, receive, and accept gifts and other payments, including property and services, from any governmental or other public or private entity or person and may make arrangements as to the use of these receipts, including any activities related to the design, maintenance, or enhancements of the statewide trauma system in the trauma care region. Regional trauma advisory boards shall report in the regional budget the amount, source, and purpose of all gifts and payments.

Source: Laws 1997, LB 626, § 52; Laws 2007, LB185, § 47.
Operative date September 1, 2007.

71-8253 Act; how construed. (1) If there are conflicts between the Statewide Trauma System Act and the Emergency Medical Services Practice Act pertaining to out-of-hospital emergency medical services, the Emergency Medical Services Practice Act shall control.

(2) Nothing in the Statewide Trauma System Act shall limit a patient's right to choose the physician, hospital, facility, rehabilitation center, specialty level burn or pediatric trauma center, or other provider of health care services.

Source: Laws 1997, LB 626, § 53; Laws 2007, LB463, § 1305.
Operative date December 1, 2008.

Cross Reference

Emergency Medical Services Practice Act, see section 38-1201.

ARTICLE 83

CREDENTIALING OF HEALTH CARE FACILITIES

Section.

71-8312. Facility regulation system; periodic review.

71-8313. Department; credentialing recommendations.

71-8312 Facility regulation system; periodic review. The Department of Health and Human Services shall periodically examine and reexamine the regulations, processes, and results of the facility regulation system. Changes in the facility regulation system should occur whenever the department finds that:

(1) A program or procedure is not needed to ensure the protection of the public health, safety, or welfare or a program or procedure is not providing adequate protection of the public health, safety, or welfare;

(2) A program or procedure has been more detrimental than beneficial to the fulfillment of the department's regulatory responsibilities as defined by law or has diminished the supply of qualified providers or the public's access to needed services; or

(3) There are alternatives to a program or procedure that would more cost effectively fulfill the department's duties and responsibilities.

Source: Laws 1998, LB 1073, § 118; Laws 2007, LB296, § 693.
Operative date July 1, 2007.

71-8313 Department; credentialing recommendations. The Department of Health and Human Services shall review the regulation or proposed regulation of categories of facilities based on the criteria in sections 71-8301 to 71-8314. On or before November 1 of each year, the department shall provide the Legislature with recommendations for credentialing of categories of facilities not previously regulated and changes in the statutes governing the credentialing of categories of facilities.

Source: Laws 1998, LB 1073, § 119; Laws 2007, LB296, § 694.
Operative date July 1, 2007.

ARTICLE 84

MEDICAL RECORDS

Section.

71-8402. Terms, defined.

71-8402 Terms, defined. For purposes of sections 71-8401 to 71-8407:

(1) Medical records means a provider's record of a patient's health history and treatment rendered;

(2) Mental health medical records means medical records or parts thereof created by or under the direction or supervision of a licensed psychiatrist, a licensed psychologist, or a mental health practitioner licensed or certified pursuant to the Mental Health Practice Act;

(3) Patient includes a patient or former patient;

(4) Patient request or request of a patient includes the request of a patient's guardian or other authorized representative; and

(5) Provider means a physician, psychologist, chiropractor, dentist, hospital, clinic, and any other licensed or certified health care practitioner or entity.

Source: Laws 1999, LB 17, § 2; Laws 2007, LB247, § 56; Laws 2007, LB463, § 1306.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 247, section 56, with LB 463, section 1306, to reflect all amendments.

Note: The changes made by LB 247 became operative June 1, 2007. The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Mental Health Practice Act, see section 38-2101.

ARTICLE 85

NEBRASKA TELEHEALTH ACT

Section.

71-8503. Terms, defined.

71-8503 Terms, defined. For purposes of the Nebraska Telehealth Act:

(1) Department means the Department of Health and Human Services;

(2) Health care practitioner means a Nebraska medicaid-enrolled provider who is licensed, registered, or certified to practice in this state by the department;

(3) Telehealth means the use of telecommunications technology by a health care practitioner to deliver health care services within his or her scope of practice at a site other than the site where the patient is located; and

(4) Telehealth consultation means any contact between a patient and a health care practitioner relating to the health care diagnosis or treatment of such patient through telehealth but does not include a telephone conversation, electronic mail message, or facsimile

transmission between a health care practitioner and a patient or a consultation between two health care practitioners.

Source: Laws 1999, LB 559, § 3; Laws 2007, LB296, § 695.
Operative date July 1, 2007.

ARTICLE 86

BLIND AND VISUALLY IMPAIRED

Section.

71-8601. Act, how cited.

71-8603. Terms, defined.

71-8610.01. Certified vocational rehabilitation counselor for the blind; duties.

71-8610.02. Vocational rehabilitation counseling for the blind; certified vocational rehabilitation counselor for the blind; certification required; qualifications; continuing competency requirements.

71-8601 Act, how cited. Sections 71-8601 to 71-8616 shall be known and may be cited as the Commission for the Blind and Visually Impaired Act.

Source: Laws 2000, LB 352, § 1; Laws 2007, LB445, § 1.
Effective date September 1, 2007.

71-8603 Terms, defined. For purposes of the Commission for the Blind and Visually Impaired Act:

(1) Blind person means:

(a) A person having sight which is so defective as to seriously limit his or her ability to engage in the ordinary vocations and activities of life; or

(b) A person, to be eligible and licensed as a blind vending facility operator under section 71-8611:

(i) Having no greater than 20/200 central visual acuity in the better eye after correction; or

(ii) Having an equally disabling loss of the visual field in which the widest diameter of the visual field subtends an angle no greater than twenty degrees;

(2) Board means the governing board of the commission;

(3) Certified vocational rehabilitation counselor for the blind means a person who is certified to practice vocational rehabilitation counseling for blind persons and holds a certificate issued by the commission;

(4) Commission means the Commission for the Blind and Visually Impaired;

(5) Committee of Blind Vendors means the committee created pursuant to 20 U.S.C. 107b-1;

(6) State workforce investment board means the board authorized by the federal Workforce Investment Act of 1998 and established in Nebraska;

(7) Vending facility means:

(a) Cafeterias, snackbars, cart services, shelters, counters, shelving, display and wall cases, refrigerating apparatus, and other appropriate auxiliary equipment necessary for the vending of articles approved by the office, agency, or person having control of the property on which the vending facility is located; and

(b) Manual or coin-operated vending machines or similar devices for vending articles approved by the office, agency, or person having control of the property on which the vending facility is located;

(8) Vending facility program means the program established and maintained pursuant to section 71-8611; and

(9) Vocational rehabilitation counseling for the blind means the process implemented by a person who operates a comprehensive and coordinated program designed to assist blind persons to gain remunerative employment, to enlarge economic opportunities for blind persons, to increase the available occupational range and diversity for blind persons, and to stimulate other efforts that aid blind persons in becoming self-supporting.

Source: Laws 2000, LB 352, § 3; Laws 2005, LB 55, § 1; Laws 2007, LB445, § 2.
Effective date September 1, 2007.

71-8610.01 Certified vocational rehabilitation counselor for the blind; duties. A certified vocational rehabilitation counselor for the blind's duties shall include, but not be limited to, the following:

(1) Assist blind persons, their families, groups of blind persons, or employers of blind persons through the counseling relationship to develop understanding, define blindness issues, define goals, plan action, and elevate expectations toward the capability of blind persons with the goal of full-time or part-time employment when appropriate, consistent with each individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(2) Be responsible for all decisions concerning eligibility for services, the nature and scope of available services, the provision of services, and the determination that a recipient of such services has achieved an employment outcome commensurate with his or her strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(3) Administer the individualized plan for employment and write the document prepared on forms provided by the commission containing descriptions of a specific employment outcome, the nature and scope of needed services and the entities to provide them, the criteria to evaluate progress toward achievement of employment outcome, and the responsibilities of the program and the recipient of such services;

(4) Plan allocation and expenditure of program funds; and

(5) Complete referral activities which evaluate data to identify which blind persons or groups of blind persons may be served in conjunction with or by other counselors.

Source: Laws 2007, LB445, § 3.
Effective date September 1, 2007.

71-8610.02 Vocational rehabilitation counseling for the blind; certified vocational rehabilitation counselor for the blind; certification required; qualifications; continuing competency requirements. (1) No person shall engage in vocational rehabilitation counseling for the blind or hold himself or herself out as a certified vocational rehabilitation counselor for the blind in the state unless he or she is certified for such purpose by the commission.

(2) A certified vocational rehabilitation counselor for the blind is not a mental health practitioner.

(3) Except as otherwise provided in subsection (5) of this section, a certified vocational rehabilitation counselor for the blind shall have the following qualifications:

(a) A bachelor's degree from an appropriate educational program approved by the executive director of the commission;

(b) Six hundred hours of intensive training under supervision at the commission's orientation training center; and

(c) Completion of appropriate training as approved by the executive director.

(4) Each certified vocational rehabilitation counselor for the blind shall, in the period since his or her certificate was issued or last renewed, complete continuing competency requirements as set forth by the commission under the executive director's approval.

(5) The commission may waive some or all of the requirements of subsection (3) of this section for any person engaged in rehabilitation counseling for the blind on or before September 1, 2007.

Source: Laws 2007, LB445, § 4.
Effective date September 1, 2007.

ARTICLE 87

PATIENT SAFETY IMPROVEMENT ACT

Section.

71-8709. Provider, defined.

71-8709 Provider, defined. Provider means a person that is either:

(1) A facility licensed under the Health Care Facility Licensure Act; or

(2) A health care professional licensed under the Uniform Credentialing Act.

Source: Laws 2005, LB 361, § 9; Laws 2007, LB463, § 1307.
Operative date December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

Uniform Credentialing Act, see section 38-101.

CHAPTER 72

PUBLIC LANDS, BUILDINGS, AND FUNDS

Article.

2. School Lands and Funds. 72-249, 72-258.03.
7. State Capital and Capitol Building. 72-730.
8. Public Buildings. 72-803, 72-818.

ARTICLE 2

SCHOOL LANDS AND FUNDS

Section.

- 72-249. Federal funds; receipt; deposit; how allocated.
- 72-258.03. School lands; sale; appraised value.

72-249 Federal funds; receipt; deposit; how allocated. The Governor of the state is empowered and directed to receive from the United States all money that may be due or may become due to the state, and it shall be his or her duty to deposit the same without delay in the treasury of the state, taking the State Treasurer's receipts therefor. All money received from the United States, for the particular benefit of any institution, department, or activity under the jurisdiction of the Department of Health and Human Services or the Department of Correctional Services, shall be paid to the particular institution, department, or activity for the benefit of which it was received, as directed by the proper department, and by such institution, department, or activity deposited with the State Treasurer not later than the first day of the month following that in which received.

Source: Laws 1899, c. 69, § 31, p. 314; R.S.1913, § 5871; Laws 1919, c. 119, § 1, p. 284; C.S.1922, § 5206; C.S.1929, § 72-226; R.S.1943, § 72-249; Laws 1963, c. 418, § 1, p. 1342; Laws 1973, LB 563, § 9; Laws 1996, LB 1044, § 787; Laws 2007, LB296, § 696.
Operative date July 1, 2007.

Cross Reference

Purpose of section, see section 83-901.

72-258.03 School lands; sale; appraised value. For purposes of sales of educational lands at public auction, appraised value is the adjusted value as determined by the Property Tax Administrator or his or her representative (1) for agricultural and horticultural land, multiplied by one and thirty-three hundredths, or (2) for all other classes of real property, multiplied by one, unless the Board of Educational Lands and Funds establishes a higher value pursuant to section 72-257 or 72-258, in which case that value shall be the appraised value for purposes of sale.

Source: Laws 2000, LB 1010, § 1; Laws 2007, LB166, § 2.
Effective date March 8, 2007.

ARTICLE 7

STATE CAPITAL AND CAPITOL BUILDING

Section.

72-730. State Capitol Restoration Fund; created; investment.

72-730 State Capitol Restoration Fund; created; investment. The State Capitol Restoration Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2006, LB 1131, § 3; Laws 2007, LB323, § 1.
Operative date July 1, 2007.

Cross Reference

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

ARTICLE 8

PUBLIC BUILDINGS

Section.

72-803. Public buildings; construction; improvement and repair; contracts; bidding; procedure; exceptions.

72-818. State-owned land; utility easement; Vacant Building and Excess Land Committee; powers and duties.

72-803 Public buildings; construction; improvement and repair; contracts; bidding; procedure; exceptions. (1) The state and any department or agency thereof, subject to the powers of the state building division of the Department of Administrative Services, shall have general charge of the erection of new buildings which are being erected for such department or agency, the repair and improvement of buildings under the control of such department or agency, including fire escapes, and the improvement of grounds under the control of such department or agency.

(2) Buildings and other improvements costing more than fifty thousand dollars shall be (a) constructed under the general charge of the department or agency as provided in subsection (1) of this section and (b) let by contract to the lowest responsible bidder after proper advertisement as set forth in subsection (4) of this section.

(3) The successful bidder at the letting shall enter into a contract with the department or agency, prepared as provided for by subsection (4) of this section, and shall furnish a bond for the faithful performance of his or her contract, except that a performance bond shall not be required for any project which has a total cost of one hundred thousand dollars or less unless the department or agency includes a bond requirement in the specifications for the project.

(4) When contracts are to be let by the department or agency as provided in subsection (2) of this section, advertisements shall be published in accordance with rules and regulations adopted and promulgated by the state building division stating that sealed proposals will be received by the department or agency at its office on the date therein stated for the furnishing of materials, the construction of buildings, or the making of repairs or improvements and that plans and specifications can be seen at the office of the department or agency. All bids or proposals shall be accompanied by a certified check or by a bid bond in a sum fixed by the department or agency and payable thereto. All such contracts shall be awarded to the lowest responsible bidder, but the right shall be reserved to reject any and all bids. Whenever any material described in any contract can be obtained from any state institution, the department or agency shall exclude it from such a contract.

Source: Laws 1990, LB 257, § 4; Laws 1992, LB 1241, § 5; Laws 1995, LB 530, § 1; Laws 2007, LB256, § 1. Effective date September 1, 2007.

72-818 State-owned land; utility easement; Vacant Building and Excess Land Committee; powers and duties. Except as provided in section 37-330, a state agency shall submit any request for granting a utility easement on state-owned land to the committee. The committee may only approve utility easements by majority vote. Utility easements may only be granted to political subdivisions or their contractors for utility or construction-related purposes. The committee shall certify the approval of a utility easement to the Director of Administrative Services who shall execute the instrument necessary to grant the easement. The state building division of the Department of Administrative Services shall be responsible for the implementation of easements granted under this section.

Source: Laws 1995, LB 567, § 1; Laws 2007, LB256, § 2. Effective date September 1, 2007.

CHAPTER 73

PUBLIC LETTINGS AND CONTRACTS

Article.

5. State Contracts for Services. 73-508.

ARTICLE 5

STATE CONTRACTS FOR SERVICES

Section.

73-508. Preapproval; required; when.

73-508 Preapproval; required; when. Except as provided in section 73-507, all proposals for sole source contracts for services in excess of fifty thousand dollars shall be preapproved by the materiel division except in emergencies. In case of an emergency, contract approval by the state agency director or his or her designee is required. A copy of the contract and agency justification of the emergency shall be provided to the Director of Administrative Services within three business days after contract approval. The state agency shall retain a copy of the justification with the contract in the agency files. The Director of Administrative Services shall maintain a complete record of such sole source contracts for services.

Source: Laws 2003, LB 626, § 8; Laws 2007, LB256, § 3.
Effective date September 1, 2007.

CHAPTER 75

PUBLIC SERVICE COMMISSION

Article.

3. Motor Carriers.

- (a) Intrastate Motor Carriers. 75-302 to 75-307.03.
- (d) Interstate Motor Carriers. 75-352.
- (e) Safety Regulations. 75-363 to 75-369.03.
- (f) Enforcement. 75-370, 75-371.
- (j) Division of Motor Carrier Services. 75-386.
- (l) Unified Carrier Registration Plan and Agreement. 75-392 to 75-399.

ARTICLE 3

MOTOR CARRIERS

(a) INTRASTATE MOTOR CARRIERS

Section.

75-302. Terms, defined.

75-303.01. Department of Health and Human Services; authorized agency; contracts for transportation authorized.

75-303.02. Contracts for transportation; requirements; reimbursement.

75-303.03. Department of Health and Human Services; reimburse transportation costs; conditions.

75-307. Insurance and bond requirements; subrogation.

75-307.01. Repealed. Laws 2007, LB 358, § 19.

75-307.02. Repealed. Laws 2007, LB 358, § 19.

75-307.03. Repealed. Laws 2007, LB 358, § 19.

(d) INTERSTATE MOTOR CARRIERS

75-352. Repealed. Laws 2007, LB 358, § 19.

(e) SAFETY REGULATIONS

75-363. Federal motor carrier safety regulations; provisions adopted; exceptions.

75-364. Additional federal motor carrier regulations; provisions adopted; exceptions.

75-369.03. Violations; civil penalty; referral to federal agency or Public Service Commission; when.

(f) ENFORCEMENT

75-370. Insurance, bond, certificate, and permit requirements; enforcement; duties.

75-371. Insurance, bond, certificate, and permit requirements; violations; penalty.

(j) DIVISION OF MOTOR CARRIER SERVICES

75-386. Division of Motor Carrier Services; duties.

(I) UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT

- 75-392. Terms, defined.
- 75-393. Unified Carrier Registration System; establishment; enforcement; director; powers.
- 75-394. Registration under unified carrier registration plan and agreement; when required; fees; authorization to accept registration.
- 75-395. Termination of prior registration systems and requirements.
- 75-396. Rules and regulations.
- 75-397. Forms and electronic systems to allow filings.
- 75-398. Violations; penalty.
- 75-399. Sections not applicable to intrastate commerce.

(a) INTRASTATE MOTOR CARRIERS

75-302 Terms, defined. For purposes of sections 75-301 to 75-322 and in all rules and regulations adopted and promulgated by the commission pursuant to such sections, unless the context otherwise requires:

(1) Carrier enforcement division means the carrier enforcement division of the Nebraska State Patrol or the Nebraska State Patrol;

(2) Certificate means a certificate of public convenience and necessity issued under Chapter 75, article 3, to common carriers by motor vehicle;

(3) Civil penalty means any monetary penalty assessed by the commission or carrier enforcement division due to a violation of Chapter 75, article 3, or section 75-126 as such section applies to any person or carrier specified in Chapter 75, article 3; any term, condition, or limitation of any certificate or permit issued pursuant to Chapter 75, article 3; or any rule, regulation, or order of the commission, the Division of Motor Carrier Services, or the carrier enforcement division issued pursuant to Chapter 75, article 3;

(4) Commission means the Public Service Commission;

(5) Common carrier means any person who or which undertakes to transport passengers or household goods for the general public in intrastate commerce by motor vehicle for hire, whether over regular or irregular routes, upon the highways of this state;

(6) Contract carrier means any motor carrier which transports passengers or household goods for hire other than as a common carrier designed to meet the distinct needs of each individual customer or a specifically designated class of customers without any limitation as to the number of customers it can serve within the class;

(7) Division of Motor Carrier Services means the Division of Motor Carrier Services of the Department of Motor Vehicles;

(8) Escort services means an attendant or caregiver accompanying a minor or persons who are physically, mentally, or developmentally disabled and unable to travel or wait without assistance or supervision;

(9) Highway means the roads, highways, streets, and ways in this state;

(10) Household goods means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property as the commission may provide by regulation if the transportation of such effects or property, is:

(a) Arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with the intent to use in his or her dwelling; or

(b) Arranged and paid for by another party;

(11) Intrastate commerce means commerce between any place in this state and any other place in this state and not in part through any other state;

(12) Motor carrier means any person other than a regulated motor carrier who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport passengers or property over any public highway in this state;

(13) Motor vehicle means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails;

(14) Permit means a permit issued under Chapter 75, article 3, to contract carriers by motor vehicle;

(15) Person means any individual, firm, partnership, limited liability company, corporation, company, association, or joint-stock association and includes any trustee, receiver, assignee, or personal representative thereof;

(16) Private carrier means any motor carrier which owns, controls, manages, operates, or causes to be operated a motor vehicle to transport passengers or property to or from its facility, plant, or place of business or to deliver to purchasers its products, supplies, or raw materials (a) when such transportation is within the scope of and furthers a primary business of the carrier other than transportation and (b) when not for hire. Nothing in sections 75-301 to 75-322 shall apply to private carriers; and

(17) Regulated motor carrier means any person who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport passengers, other than those excepted under section 75-303, or household goods over any public highway in this state.

Source: Laws 1963, c. 425, art. III, § 2, p. 1375; Laws 1969, c. 606, § 1, p. 2467; Laws 1972, LB 1370, § 1; Laws 1989, LB 78, § 18; Laws 1990, LB 980, § 25; Laws 1993, LB 121, § 464; Laws 1993, LB 412, § 2; Laws 1995, LB 424, § 22; Laws 1996, LB 1218, § 43; Laws 1999, LB 594, § 66; Laws 2006, LB 1069, § 3; Laws 2007, LB358, § 12.
Effective date September 1, 2007.

75-303.01 Department of Health and Human Services; authorized agency; contracts for transportation authorized. The Department of Health and Human Services or any agency organized under the Nebraska Community Aging Services Act may contract for transportation for its clients with a contractor which does not hold a certificate or which is not otherwise exempt under section 75-303 only if:

(1) The proposed contractor is the individual who will personally drive the vehicle in question;

(2) The only compensation to the contractor for the transportation is paid by the department at a rate no greater than that provided for reimbursement of state employees pursuant to section 81-1176 for the costs incurred in the transportation; and

(3)(a) There is no regulated motor carrier serving the area in which the client needs transportation, (b) the regulated motor carrier serving the area is incapable of providing the specific service in question by its own written statement or as determined by the commission upon application of the regulated motor carrier or the department, or (c) the regulated carrier cannot or will not provide such service at the rate specified in subsection (2) of section 75-303.02.

Source: Laws 1993, LB 412, § 4; Laws 1995, LB 424, § 24; Laws 1996, LB 1044, § 791; Laws 1999, LB 594, § 68; Laws 2007, LB296, § 697.
Operative date July 1, 2007.

Cross Reference

Nebraska Community Aging Services Act, see section 81-2201.

75-303.02 Contracts for transportation; requirements; reimbursement. (1) The commission, in consultation with the Department of Health and Human Services, shall adopt and promulgate rules and regulations governing minimum liability insurance requirements, equipment standards, driver qualification requirements, and the issuance and filing of notice for any contractor utilized by the department or any agency organized under the Nebraska Community Aging Services Act pursuant to section 75-303.01.

(2) The department or any agency organized under the Nebraska Community Aging Services Act shall reimburse common and contract carriers for transportation of passengers at a rate not to exceed the rate of reimbursement pursuant to section 81-1176 multiplied by three. The maximum reimbursement rate provided for in this subsection shall not apply when the carrier (a) transports such person wholly within the corporate limits of the city or village where the transportation of the person originated or (b) transports a disabled person as defined by the federal Americans with Disabilities Act of 1990 in a vehicle that is compliant with the regulations providing for the transportation of such disabled person.

Source: Laws 1993, LB 412, § 5; Laws 1995, LB 424, § 25; Laws 1996, LB 1044, § 792; Laws 1999, LB 594, § 69; Laws 2007, LB296, § 698.
Operative date July 1, 2007.

Cross Reference

Nebraska Community Aging Services Act, see section 81-2201.

75-303.03 Department of Health and Human Services; reimburse transportation costs; conditions. (1) The Department of Health and Human Services may reimburse an individual for the costs incurred by such individual in the transportation of a person eligible to receive transportation services through the department if:

- (a) The individual is under contract with the department and provides transportation to the eligible person; and
- (b) The eligible person has chosen the individual to provide the transportation.
- (2) The department shall reimburse for the costs incurred in the transportation at a rate no greater than that provided for reimbursement of state employees pursuant to section 81-1176.
- (3) Transportation provided to an eligible person by an individual pursuant to this section does not constitute transportation for hire.
- (4) The department may adopt and promulgate rules and regulations to implement this section.

Source: Laws 2006, LB 1069, § 2; Laws 2007, LB296, § 699.
Operative date July 1, 2007.

75-307 Insurance and bond requirements; subrogation. (1) Certificated intrastate motor carriers, including common and contract carriers, shall comply with reasonable rules and regulations prescribed by the commission governing the filing with the commission, the approval of the filings, and the maintenance of proof at such carrier's principal place of business of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in such reasonable amount as required by the commission, conditioned to pay, within the amount of such surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor vehicles under such certificate or permit or for loss or damage to property of others. No certificate or permit shall be issued to a common or contract carrier or remain in force unless such carrier complies with this section and the rules and regulations prescribed by the commission pursuant to this section.

(2) The commission may, in its discretion and under its rules and regulations, require any certificated carrier to file a surety bond, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in a sum to be determined by the commission, to be conditioned upon such carrier making compensation to shippers or consignees for all property belonging to shippers or consignees and coming into the possession of such carrier in connection with its transportation service. Any carrier which may be required by law to compensate a shipper or consignee for any loss, damage, or default for which a connecting motor common carrier is legally responsible shall be subrogated to the rights of such shipper or consignee under any such bond, policies of insurance, or other securities or agreements to the extent of the sum so paid.

(3) In carrying out this section, the commission may classify motor carriers and regulated motor carriers taking into consideration the hazards of the operations of such carriers and the value of the household goods carried. Nothing contained in this section shall be construed to authorize the commission to compel motor carriers other than common carriers of household goods to carry cargo insurance.

Source: Laws 1963, c. 425, art. III, § 7, p. 1379; Laws 1989, LB 78, § 23; Laws 1990, LB 980, § 26; Laws 1995, LB 424, § 30; Laws 2007, LB358, § 13.
Effective date September 1, 2007.

75-307.01 Repealed. Laws 2007, LB 358, § 19.

75-307.02 Repealed. Laws 2007, LB 358, § 19.

75-307.03 Repealed. Laws 2007, LB 358, § 19.

(d) INTERSTATE MOTOR CARRIERS

75-352 Repealed. Laws 2007, LB 358, § 19.

(e) SAFETY REGULATIONS

75-363 Federal motor carrier safety regulations; provisions adopted; exceptions. (1) The parts, subparts, and sections of Title 49 of the Code of Federal Regulations listed below, as modified in this section, or any other parts, subparts, and sections referred to by such parts, subparts, and sections, in existence and effective as of January 1, 2007, are adopted as Nebraska law.

(2) Except as otherwise provided in this section, the regulations shall be applicable to:

(a) All motor carriers, drivers, and vehicles to which the federal regulations apply; and

(b) All motor carriers transporting persons or property in intrastate commerce to include:

(i) All vehicles of such motor carriers with a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight over ten thousand pounds;

(ii) All vehicles of such motor carriers designed or used to transport more than eight passengers, including the driver, for compensation, or designed or used to transport more than fifteen passengers, including the driver, and not used to transport passengers for compensation;

(iii) All vehicles of such motor carriers transporting hazardous materials required to be placarded pursuant to section 75-364; and

(iv) All drivers of such motor carriers if the drivers are operating a commercial motor vehicle as defined in section 60-465 which requires a commercial driver's license.

(3) The Legislature hereby adopts, as modified in this section, the following parts of Title 49 of the Code of Federal Regulations:

(a) Part 382 - Controlled Substances And Alcohol Use And Testing;

(b) Part 385 - Safety Fitness Procedures;

(c) Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers;

(d) Part 390 - Federal Motor Carrier Safety Regulations; General;

(e) Part 391 - Qualifications Of Drivers And Longer Combination Vehicle (LCV) Driver Instructors;

(f) Part 392 - Driving Of Commercial Motor Vehicles;

- (g) Part 393 - Parts And Accessories Necessary For Safe Operation;
- (h) Part 395 - Hours Of Service Of Drivers;
- (i) Part 396 - Inspection, Repair, And Maintenance;
- (j) Part 397 - Transportation Of Hazardous Materials; Driving And Parking Rules; and
- (k) Part 398 - Transportation Of Migrant Workers.

(4) The provisions of subpart E - Physical Qualifications And Examinations of 49 C.F.R. part 391 - Qualifications Of Drivers And Longer Combination Vehicle (LCV) Driver Instructors shall not apply to any driver subject to this section who: (a) Operates a commercial motor vehicle exclusively in intrastate commerce; and (b) holds, or has held, a commercial driver's license issued by this state prior to July 30, 1996.

(5) The regulations adopted in subsection (3) of this section shall not apply to farm trucks registered pursuant to section 60-3,146 with a gross weight of sixteen tons or less or to fertilizer and agricultural chemical application and distribution equipment transported in units with a capacity of three thousand five hundred gallons or less if the equipment is not required to be placarded pursuant to section 75-364. The following parts and sections of 49 C.F.R. chapter III shall not apply to drivers of farm trucks registered pursuant to section 60-3,146 and operated solely in intrastate commerce:

- (a) All of part 391;
- (b) Section 395.8 of part 395; and
- (c) Section 396.11 of part 396.

(6) For purposes of this section, intrastate motor carriers shall not include any motor carrier or driver excepted from 49 C.F.R. chapter III by section 390.3(f) of part 390 or any nonprofit entity, operating solely in intrastate commerce, organized for the purpose of furnishing electric service.

(7) Part 395 - Hours Of Service Of Drivers shall apply to motor carriers and drivers who engage in intrastate commerce as defined in section 75-362, except that no motor carrier who engages in intrastate commerce shall permit or require any driver used by it to drive nor shall any driver drive:

- (a) More than twelve hours following eight consecutive hours off duty; or
- (b) For any period after having been on duty sixteen hours following eight consecutive hours off duty.

No motor carrier who engages in intrastate commerce shall permit or require a driver of a commercial motor vehicle, regardless of the number of motor carriers using the driver's services, to drive, nor shall any driver of a commercial motor vehicle drive, for any period after:

- (i) Having been on duty seventy hours in any seven consecutive days if the employing motor carrier does not operate every day of the week; or
- (ii) Having been on duty eighty hours in any period of eight consecutive days if the employing motor carrier operates motor vehicles every day of the week.

(8) Part 395 - Hours Of Service Of Drivers, as adopted in subsections (3) and (7) of this section, shall not apply to drivers transporting agricultural commodities or farm supplies for

agricultural purposes when the transportation of such commodities or supplies occurs within a one-hundred-air-mile radius of the source of the commodities or the distribution point for the supplies when such transportation occurs during the period beginning on February 15 up to and including December 15 of each calendar year.

(9) 49 C.F.R. 390.21 - Marking Of Commercial Motor Vehicles shall not apply to farm trucks and farm truck-tractors registered pursuant to section 60-3,146 and operated solely in intrastate commerce.

(10) 49 C.F.R. 392.9a - Operating Authority shall not apply to Nebraska motor carriers operating commercial motor vehicles solely in intrastate commerce.

Source: Laws 1986, LB 301, § 1; Laws 1987, LB 224, § 23; Laws 1988, LB 884, § 1; Laws 1989, LB 285, § 140; Laws 1990, LB 980, § 29; Laws 1991, LB 854, § 3; Laws 1993, LB 410, § 1; Laws 1994, LB 1061, § 5; Laws 1995, LB 461, § 1; Laws 1996, LB 938, § 4; Laws 1997, LB 722, § 1; Laws 1998, LB 1056, § 8; Laws 1999, LB 161, § 1; Laws 1999, LB 704, § 49; Laws 2000, LB 1361, § 11; Laws 2001, LB 375, § 1; Laws 2002, LB 499, § 5; Laws 2003, LB 480, § 2; Laws 2004, LB 878, § 1; Laws 2005, LB 83, § 1; Laws 2005, LB 274, § 271; Laws 2006, LB 1007, § 13; Laws 2007, LB239, § 8. Effective date September 1, 2007.

75-364 Additional federal motor carrier regulations; provisions adopted; exceptions. (1) The parts, subparts, and sections of Title 49 of the Code of Federal Regulations listed below, or any other parts, subparts, and sections referred to by such parts, subparts, and sections, in existence and effective as of January 1, 2007, are adopted as part of Nebraska law and, except as provided in subsections (2) and (3) of this section, shall be applicable to all motor carriers whether engaged in interstate or intrastate commerce, drivers of such motor carriers, and vehicles of such motor carriers:

(a) Part 107 - Hazardous Materials Program Procedures, subpart F - Registration Of Cargo Tank And Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers;

(b) Part 107 - Hazardous Materials Program Procedures, subpart G - Registration Of Persons Who Offer Or Transport Hazardous Materials;

(c) Part 171 - General Information, Regulations, And Definitions;

(d) Part 172 - Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements;

(e) Part 173 - Shippers-General Requirements For Shipments And Packagings;

(f) Part 177 - Carriage By Public Highway;

(g) Part 178 - Specifications For Packagings; and

(h) Part 180 - Continuing Qualification And Maintenance Of Packagings.

(2) Agricultural operations exceptions:

(a) The transportation of an agricultural product other than a Class 2 material (Compressed Gases) as defined in 49 C.F.R. 171.8, over roads, other than the National System of Interstate and Defense Highways, between fields of the same farm, is excepted from subsection (1) of this section when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier; and

(ii) The movement of the agricultural product conforms to all other laws in effect on or before July 1, 1998, and 49 C.F.R. 173.24, 173.24a, and 173.24b;

(b) The transportation of an agricultural product to or from a farm, within one hundred fifty miles of the farm, is excepted from the requirements in 49 C.F.R. part 172, subparts G (emergency response information) and H (training), and from the specific packaging requirements of subsection (1) of this section when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier;

(ii) The total amount of agricultural product being transported on a single vehicle does not exceed:

(A) Sixteen thousand ninety-four pounds of ammonium nitrate fertilizer properly classed as Division 5.1, PGIII, in a bulk packaging; or

(B) Five hundred two gallons for liquids or gases, or five thousand seventy pounds for solids, of any other agricultural product;

(iii) The packaging conforms to the requirements of state law and is specifically authorized for transportation of the agricultural product by state law and such state law has been in effect on or before July 1, 1998; and

(iv) Each person having any responsibility for transporting the agricultural product or preparing the agricultural product for shipment has been instructed in the applicable requirements of the parts, subparts, and sections of Title 49 of the Code of Federal Regulations adopted in this section; and

(c) Formulated liquid agricultural products in specification packagings of fifty-eight-gallon capacity or less, with closures manifolded to a closed mixing system and equipped with positive dry disconnect devices, may be transported by a private motor carrier between a final distribution point and an ultimate point of application or for loading aboard an airplane for aerial application.

(3) Exceptions for nonspecification packagings used in intrastate transportation:

(a) Nonspecification cargo tanks for petroleum products: Notwithstanding requirements for specification packagings in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178 and 180, a nonspecification metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than three thousand five hundred gallons, may be used by an intrastate motor carrier for transportation of a flammable liquid petroleum product in accordance with subdivision (c) of this subsection;

(b) Permanently secured nonbulk tanks for petroleum products: Notwithstanding requirements for specification packagings in 49 C.F.R. part 173, subpart F, and 49 C.F.R. parts 178 and 180, a nonspecification metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than one hundred nineteen gallons, may be used by an intrastate motor carrier for transportation of

a flammable liquid petroleum product in accordance with subdivision (c) of this subsection; and

(c) Additional requirements: A packaging used pursuant to subdivision (a) or (b) of this subsection must:

(i) Be operated by an intrastate motor carrier and in use as a packaging for hazardous material before July 1, 1998;

(ii) Be operated in conformance with the requirements of the State of Nebraska;

(iii) Be specifically authorized by state law in effect before July 1, 1998, for use as a packaging for the hazardous material being transported and by 49 C.F.R. 173.24, 173.24a, and 173.24b;

(iv) Be offered for transportation and transported in conformance with all other applicable requirements of the hazardous material regulations;

(v) Not be used to transport a flammable cryogenic liquid, hazardous substance, hazardous waste, or marine pollutant as defined in 49 C.F.R. 171.8; and

(vi) On and after July 1, 2000, for a tank authorized under subdivision (a) or (b) of this subsection, conform to all requirements in 49 C.F.R. part 180, except for 49 C.F.R. 180.405(g), in the same manner as required for a United States Department of Transportation specification MC306 cargo tank motor vehicle.

(4) For purposes of this section:

(a) Agricultural product means a hazardous material, other than a hazardous waste, whose end use directly supports the production of an agricultural commodity, including, but not limited to, a fertilizer, pesticide, soil amendment, or fuel. An agricultural product is limited to a material in Class 3 (Flammable Liquids), Class 8 (Corrosives), or Class 9 (Miscellaneous), Division 2.1 (Flammable Gas), Division 2.2 (Nonflammable Gas), Division 5.1 (Oxidizers), or Division 6.1 (Poisons), or an ORM-D material (Consumer Commodity), as defined in 49 C.F.R. 171.8;

(b) Bulk package means a packaging, including a transport vehicle or freight container, in which hazardous materials are loaded with no other intermediate form of containment and which has:

(i) A maximum capacity greater than one hundred nineteen gallons as a receptacle for a liquid;

(ii) A maximum net mass greater than eight hundred eighty-two pounds and a maximum capacity greater than one hundred nineteen gallons as a receptacle for a solid; or

(iii) A water capacity greater than one thousand pounds as a receptacle for a gas, pursuant to standards set forth in 49 C.F.R. 173.115;

(c) Farmer means a person engaged in the production or raising of crops, poultry, or livestock; and

(d) Private motor carrier means a person or persons engaged in the transportation of persons or product while in commerce, but not for hire.

Source: Laws 1986, LB 301, § 2; Laws 1987, LB 538, § 1; Laws 1988, LB 884, § 2; Laws 1990, LB 980, § 30; Laws 1991, LB 854, § 4; Laws 1993, LB 410, § 2; Laws 1994, LB 1061, § 6; Laws 1995, LB 461, § 2; Laws 1996, LB 938, § 5; Laws 1997, LB 722, § 2; Laws 1998, LB 1056, § 9; Laws 1999, LB 161, § 2; Laws 2000, LB 1361, § 12; Laws 2001, LB 375, § 2; Laws 2002, LB 499, § 6; Laws 2003, LB 480, § 3; Laws 2004, LB 878, § 2; Laws 2005, LB 83, § 2; Laws 2006, LB 1007, § 15; Laws 2007, LB239, § 9.
Effective date September 1, 2007.

75-369.03 Violations; civil penalty; referral to federal agency or Public Service Commission; when. The Superintendent of Law Enforcement and Public Safety may issue an order imposing a civil penalty against a motor carrier transporting persons or property in interstate commerce for a violation of sections 75-348 to 75-358 or 75-392 to 75-399 or against a motor carrier transporting persons or property in intrastate commerce for a violation or violations of section 75-363 or 75-364 based upon an inspection conducted pursuant to section 75-366 in an amount which shall not exceed five hundred dollars for any single violation in any proceeding or series of related proceedings against any person or motor carrier as defined in 49 C.F.R. part 390.5 as adopted in section 75-363. The superintendent shall issue an order imposing a civil penalty in an amount not to exceed ten thousand dollars against a motor carrier transporting persons or property in interstate commerce for a violation of subsection (3) of section 60-4,162 based upon a conviction of such a violation. Upon the discovery of any violation by a motor carrier transporting persons or property in interstate commerce of section 75-307, 75-363, or 75-364 or sections 75-392 to 75-399 based upon an inspection conducted pursuant to section 75-366, the superintendent shall immediately refer such violation to the appropriate federal agency for disposition, and upon the discovery of any violation by a motor carrier transporting persons or property in intrastate commerce of section 75-307 based upon such inspection, the superintendent shall refer such violation to the Public Service Commission for disposition.

Source: Laws 1994, LB 358, § 3; Laws 1996, LB 1218, § 62; Laws 2002, LB 499, § 7; Laws 2006, LB 1007, § 20; Laws 2007, LB358, § 14.
Effective date September 1, 2007.

(f) ENFORCEMENT

75-370 Insurance, bond, certificate, and permit requirements; enforcement; duties. Enforcement of sections 75-307 and 75-309 shall be carried out by the carrier enforcement division of the Nebraska State Patrol or the Nebraska State Patrol pursuant to the rules and regulations adopted and promulgated by the commission to enforce such sections. Any violation of such sections by any regulated motor carrier, motor carrier, or private carrier shall be referred to the commission for disposition under section 75-156, and the commission may take any other action provided by section 75-133.

Source: Laws 1990, LB 980, § 32; Laws 1994, LB 414, § 80; Laws 1995, LB 424, § 49; Laws 1996, LB 1218, § 63; Laws 2006, LB 1069, § 4; Laws 2007, LB358, § 15.
Effective date September 1, 2007.

75-371 Insurance, bond, certificate, and permit requirements; violations; penalty. Any person, private carrier, common carrier, or contract carrier which operates any motor vehicle in violation of section 75-307 or any rule, regulation, or order of the commission pertaining to such section shall be guilty of a Class IV misdemeanor. Each day of such violation shall constitute a separate offense.

Source: Laws 1990, LB 980, § 33; Laws 1994, LB 414, § 81; Laws 1995, LB 424, § 50; Laws 1996, LB 1218, § 64; Laws 2006, LB 1069, § 5; Laws 2007, LB358, § 16.
Effective date September 1, 2007.

(j) DIVISION OF MOTOR CARRIER SERVICES

75-386 Division of Motor Carrier Services; duties. The Division of Motor Carrier Services shall:

- (1) Foster, promote, and preserve the motor carrier industry of the State of Nebraska;
- (2) Protect and promote the public health and welfare of the citizens of the state by ensuring that the motor carrier industry is operated in an efficient and safe manner;
- (3) Promote and provide for efficient and uniform governmental oversight of the motor carrier industry;
- (4) Promote financial responsibility on the part of motor carriers operating in and through the State of Nebraska;
- (5) Administer all provisions of the International Fuel Tax Agreement Act, the International Registration Plan Act, and the single state insurance registration system pursuant to sections 75-348 to 75-358 or 75-392 to 75-399;
- (6) Provide for the issuance of certificates of title to apportioned registered motor vehicles as provided for by subsection (6) of section 60-144; and
- (7) Carry out such other duties and responsibilities as directed by the Legislature.

Source: Laws 1996, LB 1218, § 2; Laws 2003, LB 563, § 41; Laws 2005, LB 276, § 110; Laws 2005, LB 284, § 4; Laws 2007, LB358, § 17.
Effective date September 1, 2007.

Cross Reference

International Fuel Tax Agreement Act, see section 66-1401.

International Registration Plan Act, see section 60-349.

(l) UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT

75-392 Terms, defined. For purposes of sections 75-392 to 75-399:

- (1) Director means the Director of Motor Vehicles;
- (2) Division means the Division of Motor Carrier Services of the Department of Motor Vehicles; and
- (3) Unified carrier registration plan and agreement means the plan and agreement established and authorized pursuant to 49 U.S.C. 14504, as such section existed on January 1, 2007.

Source: Laws 2007, LB358, § 1.
Effective date September 1, 2007.

75-393 Unified Carrier Registration System; establishment; enforcement; director; powers. (1) On and after the date the United States Secretary of Transportation establishes the Unified Carrier Registration System in accordance with the Unified Carrier Registration Act of 2005, 49 U.S.C. 13908, as such act existed on January 1, 2007, the director may designate a date to begin enforcement of such act in this state.

(2) The director may participate in the unified carrier registration plan and agreement and may file on behalf of this state the plan required by such plan and agreement.

Source: Laws 2007, LB358, § 2.
Effective date September 1, 2007.

75-394 Registration under unified carrier registration plan and agreement; when required; fees; authorization to accept registration. (1) On and after the date designated by the director pursuant to section 75-393, no foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder shall operate any motor vehicle on a highway of this state or in interstate commerce without first being registered in this state or another jurisdiction pursuant to the unified carrier registration plan and agreement and having paid all fees required under the unified carrier registration plan and agreement for such registration. A motor carrier, private carrier, leasing company, broker, or freight forwarder with its principal place of business in this state shall register in this state with and pay its required registration fees to the division. The division shall remit the fees to the State Treasurer for credit to the General Fund.

(2) On and after the date designated by the director pursuant to section 75-393, the division may accept the registration of and fees required from a foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder that maintains an office in this state but does not have its principal place of business in the United States or that maintains an office in this state but has its principal place of business in another jurisdiction that does not participate in the unified carrier registration plan and agreement. The division shall remit the fees to the State Treasurer for credit to the General Fund.

Source: Laws 2007, LB358, § 3.
Effective date September 1, 2007.

75-395 Termination of prior registration systems and requirements. The single state insurance registration system, the previous registration system for common, contract, and private carriers, and sections 75-348 to 75-358 shall terminate on the date designated by the director pursuant to section 75-393.

Source: Laws 2007, LB358, § 4.
Effective date September 1, 2007.

75-396 Rules and regulations. On and after the date designated by the director pursuant to section 75-393 the director may adopt and promulgate rules and regulations to carry out the unified carrier registration plan and agreement.

Source: Laws 2007, LB358, § 5.
Effective date September 1, 2007.

75-397 Forms and electronic systems to allow filings. On and after the date designated by the director pursuant to section 75-393, the director may prescribe the appropriate forms and implement the appropriate electronic systems to allow filings with the division pursuant to the unified carrier registration plan and agreement.

Source: Laws 2007, LB358, § 6.
Effective date September 1, 2007.

75-398 Violations; penalty. On and after the date designated by the director pursuant to section 75-393, any foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder operating any motor vehicle in violation of sections 75-392 to 75-399, any rule or regulation adopted and promulgated pursuant to such sections, or any order of the division issued pursuant to such sections is guilty of a Class IV misdemeanor and shall also be subject to section 75-369.03. Each day of the violation constitutes a separate offense.

Source: Laws 2007, LB358, § 7.
Effective date September 1, 2007.

75-399 Sections not applicable to intrastate commerce. Sections 75-392 to 75-399 do not apply to a foreign or domestic motor carrier, private carrier, leasing company, broker, or freight forwarder, including a transporter of waste or recyclable materials, engaged exclusively in intrastate commerce.

Source: Laws 2007, LB358, § 8.
Effective date September 1, 2007.

CHAPTER 76

REAL PROPERTY

Article.

- 2. Conveyances.
 - (d) Formalities of Execution. 76-214.
- 13. Retirement Communities and Subdivisions. 76-1304.
- 14. Landlord and Tenant.
 - (b) Mobile Home Landlord and Tenant Act. 76-14,102.
- 22. Real Property Appraiser Act. 76-2210 to 76-2247.01.

ARTICLE 2

CONVEYANCES

(d) FORMALITIES OF EXECUTION

Section.

- 76-214. Deed, memorandum of contract, or land contract; recorded; tax statement required; access.

(d) FORMALITIES OF EXECUTION

76-214 Deed, memorandum of contract, or land contract; recorded; tax statement required; access. (1) Every grantee who has a deed to real estate recorded which was executed after July 21, 1965, and every purchaser of real estate who has a memorandum of contract or land contract recorded which was executed after July 16, 1994, shall, at the time such deed, memorandum of contract, or land contract is presented for recording, file with the register of deeds a completed statement as prescribed by the Tax Commissioner. For all deeds executed and recorded after January 1, 1986, and for all memoranda of contract and land contracts executed and recorded after July 16, 1994, and prior to January 1, 2001, the statement shall contain the social security number of the grantee or purchaser, if living, or the federal employer identification number of the grantee or purchaser. For all deeds and all memoranda of contract and land contracts executed and recorded on and after January 1, 2001, the statement shall not require the social security number of the grantee or purchaser or the federal employer identification number of the grantee or purchaser. This statement may require the recitation of any information contained in the deed, memorandum of contract, or land contract, the total consideration paid, the amount of the total consideration attributable to factors other than the purchase of the real estate itself, and other factors which may influence the transaction. This statement shall be signed and filed by the grantee, the purchaser, or his or her authorized agent. The statement form shall be designed so that multiple copies are generated. Beginning January 1, 2001, the register of deeds shall forward the original copy of the statement to the Department of Revenue, two copies of the statement shall be provided to the county assessor, and a copy shall be provided to the grantee or purchaser or his or her agent.

If the grantee or purchaser fails to furnish the statement, the register of deeds shall not record the deed, memorandum of contract, or land contract. The register of deeds shall indicate on the statement the book and page or computer system reference where the deed, memorandum of contract, or land contract is recorded and shall immediately forward the statement to the county assessor. The county assessor shall process the statement according to the instructions of the Property Tax Administrator and shall, when directed, forward the statement to the Tax Commissioner. Except as provided in subsection (2) of this section, the statement and the information contained therein shall be confidential and available to tax officials only.

(2) Any person shall have access to statements at the office of the county assessor which have been filed on or after January 1, 1995, and have not been disposed of pursuant to the records retention and disposition schedule as approved by the State Records Administrator.

Source: Laws 1917, c. 224, § 1, p. 549; C.S.1922, § 5662; C.S.1929, § 76-268; R.S.1943, § 76-214; Laws 1965, c. 456, § 1, p. 1450; Laws 1965, c. 457, § 1, p. 1451; Laws 1981, LB 28, § 1; Laws 1981, LB 179, § 1; Laws 1984, LB 679, § 13; Laws 1985, LB 273, § 37; Laws 1986, LB 1027, § 200; Laws 1994, LB 902, § 13; Laws 1994, LB 1275, § 6; Laws 1995, LB 490, § 26; Laws 1995, LB 527, § 1; Laws 2000, LB 968, § 21; Laws 2007, LB334, § 12.
Operative date July 1, 2007.

ARTICLE 13

RETIREMENT COMMUNITIES AND SUBDIVISIONS

Section.

76-1304. Application of sections; exceptions.

76-1304 Application of sections; exceptions. Unless the method of disposition is adopted for the purpose of evasion of the provisions of sections 76-1301 to 76-1315, such provisions shall not apply to offers or dispositions of any lot or unit in a retirement subdivision or community by a purchaser for his or her own account in a single or isolated transaction, nor shall such provisions apply to the following:

(1) Offers or dispositions of evidences of indebtedness secured by a mortgage or deed of trust of real estate;

(2) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;

(3) The sale or lease of real estate under or pursuant to court order;

(4) The disposition in any manner whatsoever of any unit of public housing under the administrative jurisdiction of a local public housing authority;

(5) Offers or dispositions of securities currently registered with the Director of Banking and Finance and under the provisions of the Securities Act of Nebraska; and

(6) Health care facilities licensed by the Department of Health and Human Services under the Health Care Facility Licensure Act.

Source: Laws 1972, LB 1311, § 4; Laws 1988, LB 693, § 17; Laws 1996, LB 1044, § 793; Laws 2000, LB 819, § 148; Laws 2003, LB 61, § 3; Laws 2007, LB296, § 700.
Operative date July 1, 2007.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.
Securities Act of Nebraska, see section 8-1123.

ARTICLE 14

LANDLORD AND TENANT

(b) MOBILE HOME LANDLORD AND TENANT ACT

Section.

76-14,102. Noncompliance by tenant affecting health and safety; landlord's rights.

(b) MOBILE HOME LANDLORD AND TENANT ACT

76-14,102 Noncompliance by tenant affecting health and safety; landlord's rights. If there is noncompliance by a tenant with section 76-1493 materially affecting health and safety or any condition which is ordered to be changed by the State Fire Marshal, the State Electrical Board, the Department of Health and Human Services, or any other regulatory body with jurisdiction over either the park or the mobile home space that can be remedied by repair, replacement of a damaged item, or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within fourteen days after written notice by the landlord specifying the breach and requesting that the tenant remedy the breach or take reasonable steps to remedy it within that period of time, the landlord may enter the mobile home space, cause the work to be done in a skillful manner, and submit an itemized bill for the actual and reasonable cost or the fair and reasonable value as additional rent on the next date when periodic rent is due or, if the rental agreement has been terminated, for immediate payment. If the landlord is assessed any fine, cost, or charge as a result of the tenant's failure to comply with an order issued by the State Fire Marshal, the State Electrical Board, the Department of Health and Human Services, or any other regulatory body with jurisdiction over either the park or the mobile home space, the landlord may require the tenant to pay such fine, cost, or charge.

Source: Laws 1984, LB 916, § 53; Laws 1996, LB 1044, § 794; Laws 2007, LB296, § 701.
Operative date July 1, 2007.

ARTICLE 22

REAL PROPERTY APPRAISER ACT

Section.

76-2210. Certified general real property appraiser, defined.

76-2210.01. Certified real property appraiser, defined.

- 76-2210.02. Certified residential real property appraiser, defined.
- 76-2213. Licensed real property appraiser, defined.
- 76-2213.01. Uniform Standards of Professional Appraisal Practice, defined.
- 76-2217.01. Registered real property appraiser, defined.
- 76-2219. Valuation assignment, defined.
- 76-2223. Board; powers and duties; rules and regulations.
- 76-2226. Real Property Appraiser Fund; created; use; investment.
- 76-2227. Credentials; application; requirements.
- 76-2228. Appraisers; classification.
- 76-2228.01. Trainee real property appraiser; applicant; qualifications.
- 76-2229. Use of titles; restrictions.
- 76-2229.01. Credential as a registered real property appraiser; applicant; qualifications.
- 76-2230. Credential as a licensed real property appraiser; applicant; qualifications.
- 76-2231.01. Credential as a certified residential real property appraiser; applicant; qualifications.
- 76-2232. Credential as a certified general real property appraiser; applicant; qualifications.
- 76-2233. Nonresident; credential; issuance; when; waiver authorized.
- 76-2233.01. Nonresident; temporary credential; issuance; when.
- 76-2236. Continuing education; requirements; extension or waiver.
- 76-2237. Uniform Standards of Professional Appraisal Practice; rules and regulations.
- 76-2241. Fees.
- 76-2242. Credential holder; proof of credentials; issuance.
- 76-2247.01. Services; authorized; contingent fee prohibited; when.

76-2210 Certified general real property appraiser, defined. Certified general real property appraiser means a person who holds a valid credential as a certified general real property appraiser issued under the Real Property Appraiser Act.

Source: Laws 1990, LB 1153, § 10; Laws 1991, LB 203, § 13; Laws 1994, LB 1107, § 10; Laws 2006, LB 778, § 23; Laws 2007, LB186, § 1.
Effective date September 1, 2007.

76-2210.01 Certified real property appraiser, defined. Certified real property appraiser means a person who holds a valid credential as a certified general real property appraiser or a valid credential as a certified residential real property appraiser issued under the Real Property Appraiser Act.

Source: Laws 1994, LB 1107, § 11; Laws 2006, LB 778, § 24; Laws 2007, LB186, § 2.
Effective date September 1, 2007.

76-2210.02 Certified residential real property appraiser, defined. Certified residential real property appraiser means a person who holds a valid credential as a certified residential real property appraiser issued under the Real Property Appraiser Act.

Source: Laws 1994, LB 1107, § 12; Laws 2006, LB 778, § 25; Laws 2007, LB186, § 3.
Effective date September 1, 2007.

76-2213 Licensed real property appraiser, defined. Licensed real property appraiser means a person who holds a valid credential as a licensed real property appraiser issued under the Real Property Appraiser Act.

Source: Laws 1990, LB 1153, § 13; Laws 1991, LB 203, § 16; Laws 2006, LB 778, § 30; Laws 2007, LB186, § 4.
Effective date September 1, 2007.

76-2213.01 Uniform Standards of Professional Appraisal Practice, defined. Uniform Standards of Professional Appraisal Practice means the standards promulgated by the Appraisal Foundation, as the standards existed on January 1, 2007.

Source: Laws 2001, LB 162, § 11; R.S.1943, (2003), § 76-2218.01; Laws 2006, LB 778, § 31; Laws 2007, LB186, § 5.
Effective date September 1, 2007.

76-2217.01 Registered real property appraiser, defined. Registered real property appraiser means a person who holds a valid credential as a registered real property appraiser as provided in section 76-2229.01.

Source: Laws 1991, LB 203, § 17; Laws 1994, LB 1107, § 14; Laws 2001, LB 162, § 9; Laws 2006, LB 778, § 36; Laws 2007, LB186, § 6.
Effective date September 1, 2007.

76-2219 Valuation assignment, defined. Valuation assignment means (1) an appraisal that estimates the value of identified real estate or identified real property at a particular point in time or (2) a valuation service provided as a consequence of an agreement between a real property appraiser and a client.

Source: Laws 1990, LB 1153, § 19; Laws 1991, LB 203, § 20; Laws 2006, LB 778, § 39; Laws 2007, LB186, § 7.
Effective date September 1, 2007.

76-2223 Board; powers and duties; rules and regulations. The board shall administer and enforce the Real Property Appraiser Act and may:

(1) Receive applications for credentialing under the act, process such applications and regulate the issuance of credentials to qualified applicants, and maintain a directory of the names and addresses of persons who receive credentials under the act;

(2) Hold meetings, public hearings, informal conferences, and administrative hearings, prepare or cause to be prepared specifications for all appraiser classifications, solicit bids and enter into contracts with one or more educational testing services or organizations for the preparation of a bank of questions and answers for examinations, and administer or contract for the administration of examinations in such places and at such times as deemed appropriate;

(3) Develop the specifications for credentialing examinations, including timing, location, and security necessary to maintain the integrity of the examinations;

(4) Review from time to time the procedure for selecting individual questions from the bank of questions for use in connection with each scheduled examination and review from time to time the questions in the bank of questions and the related answers to ascertain that they meet the specifications established by the board;

(5) Collect all fees required or permitted by the act. The board shall remit all such receipts to the State Treasurer for credit to the Real Property Appraiser Fund. In addition, the board may collect and transmit to the appropriate federal authority any fees established under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as the act existed on January 1, 2006;

(6) Establish appropriate administrative procedures for disciplinary proceedings conducted pursuant to the Real Property Appraiser Act;

(7) Issue subpoenas to compel the attendance of witnesses and the production of books, documents, records, and other papers, administer oaths, and take testimony and require submission of and receive evidence concerning all matters within its jurisdiction. In case of disobedience of a subpoena, the board may make application to the district court of Lancaster County to require the attendance and testimony of witnesses and the production of documentary evidence. If any person fails to obey an order of the court, he or she may be punished by the court as for contempt thereof;

(8) Deny, censure, suspend, or revoke an application or credential if it finds that the applicant or credential holder has committed any of the acts or omissions set forth in section 76-2238 or otherwise violated the act. Any disciplinary matter may be resolved through informal disposition pursuant to section 84-913;

(9) Take appropriate disciplinary action against a credential holder if the board determines that a credential holder has violated any provision of the act or the Uniform Standards of Professional Appraisal Practice;

(10) Enter into consent decrees and issue cease and desist orders upon a determination that a violation of the act has occurred;

(11) Promote research and conduct studies relating to the profession of real property appraisal, sponsor real property appraisal educational activities, and incur, collect fees for, and pay the necessary expenses in connection with activities which shall be open to all credential holders;

(12) Establish and annually adopt minimum standards for appraisals as required under section 76-2237;

(13) Adopt and promulgate rules and regulations to carry out the act. The rules and regulations may include provisions establishing minimum standards for schools, courses, and instructors. The rules and regulations shall be adopted pursuant to the Administrative Procedure Act; and

(14) Do all other things necessary to carry out the Real Property Appraiser Act.

Source: Laws 1990, LB 1153, § 23; Laws 1991, LB 203, § 24; Laws 1994, LB 1107, § 19; Laws 2001, LB 162, § 15; Laws 2006, LB 778, § 43; Laws 2007, LB186, § 8.
Effective date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

76-2226 Real Property Appraiser Fund; created; use; investment. There is hereby created the Real Property Appraiser Fund. The board may use the fund for the administration and enforcement of the Real Property Appraiser Act and to meet the necessary expenditures of the board. The fund shall include a sufficient cash fund balance as determined by the board. The expense of administering and enforcing the act shall not exceed the money collected by the board under 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 1990, LB 1153, § 26; Laws 1991, LB 203, § 27; Laws 1994, LB 1066, § 78; Laws 1994, LB 1107, § 22; Laws 2001, LB 162, § 17; Laws 2006, LB 778, § 46; Laws 2007, LB186, § 9.
Effective date September 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.

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

76-2227 Credentials; application; requirements. (1) Applications for credentials, including authorization to take the appropriate examination, and for renewal of credentials shall be made in writing to the board on forms approved by the board. The payment of the appropriate fee fixed by the board pursuant to section 76-2241 shall accompany all applications.

(2) At the time of filing an initial or renewal application for credentials, the applicant shall sign a pledge that he or she has read and will comply with the Uniform Standards of Professional Appraisal Practice. Each applicant shall also certify that he or she understands the types of misconduct for which disciplinary proceedings may be initiated.

(3) Credentials shall be issued only to persons who have a good reputation for honesty, trustworthiness, integrity, and competence to perform assignments in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualification has been presented to the board upon request.

(4) No credential shall be issued to a corporation, partnership, limited liability company, firm, or group.

Source: Laws 1990, LB 1153, § 27; Laws 1991, LB 203, § 28; Laws 1993, LB 121, § 490; Laws 1994, LB 1107, § 23; Laws 2001, LB 162, § 18; Laws 2006, LB 778, § 47; Laws 2007, LB186, § 10.
Effective date September 1, 2007.

76-2228 Appraisers; classification. (1) Prior to January 1, 2008, there shall be four classes of credentials issued to real property appraisers as follows:

(a) Registered real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2229.01;

(b) Licensed real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2230;

(c) Certified residential real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2231.01; and

(d) Certified general real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2232.

(2) On and after January 1, 2008, there shall be five classes of credentials issued to real property appraisers as follows:

(a) Trainee real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2228.01;

(b) Registered real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2229.01;

(c) Licensed real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2230;

(d) Certified residential real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2231.01; and

(e) Certified general real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2232.

Source: Laws 1990, LB 1153, § 28; Laws 1991, LB 203, § 29; Laws 1994, LB 1107, § 24; Laws 2001, LB 162, § 19; Laws 2006, LB 778, § 48; Laws 2007, LB186, § 11.
Effective date September 1, 2007.

76-2228.01 Trainee real property appraiser; applicant; qualifications. (1) On and after January 1, 2008, to qualify for a credential as a trainee real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b) Hold a high school diploma or a certificate of high school equivalency or have education acceptable to the board;

(c) Have successfully completed no fewer than seventy-five class hours in board-approved courses of study which relate to appraisal and which include completion of the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, or its equivalent as approved by the Appraiser Qualifications Board. The fifteen-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board and shall be, at a minimum, fifteen class hours in length. Each course shall include an examination pertinent to the material presented. The applicant shall have

completed the class hours within the five-year period immediately preceding submission of the application and shall have completed the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course within the two-year period immediately preceding submission of the application;

(d) Be subject to direct supervision by a supervising appraiser or appraisers who are certified residential real property appraisers or certified general real property appraisers in good standing. The supervising appraiser shall be responsible for the training and direct supervision of the trainee by accepting responsibility for the appraisal report by signing and certifying the report is in compliance with the Uniform Standards of Professional Appraisal Practice, reviewing the trainee appraisal reports, and personally inspecting each appraised property with the trainee until the supervising appraiser determines the trainee is competent in accordance with the competency rule of the Uniform Standards of Professional Appraisal Practice. The trainee shall maintain an appraisal log for each supervising appraiser in accordance with standards set by rule and regulation of the board; and

(e) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) If a trainee real property appraiser remains in the classification in excess of two years, the trainee shall be required in the third and successive years to successfully complete no fewer than fourteen hours of instruction in courses or seminars for each year of the period preceding the renewal and shall have completed the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent, at a minimum of every two years. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board. Credit may be granted for educational offerings and for participation other than as a student as approved by the board.

(3) The application for a credential as a trainee real property appraiser shall include the applicant's social security number and such other information as the board may require.

Source: Laws 2006, LB 778, § 49; Laws 2007, LB186, § 12.
Effective date September 1, 2007.

76-2229 Use of titles; restrictions. (1) No person other than a registered real property appraiser shall assume or use the title registered real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a registered real property appraiser by this state. No person other than a licensed real property appraiser shall assume or use the title licensed real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a licensed real property appraiser by this state. No person other than a certified residential real property appraiser shall assume or use the title certified residential real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a certified residential real property appraiser by this state. No person other than a certified general real property appraiser shall assume or use the title certified general real property appraiser or any title, designation, or abbreviation

likely to create the impression of credentialing as a certified general real property appraiser by this state. A real property appraiser shall state whether he or she is a registered real property appraiser, licensed real property appraiser, certified residential real property appraiser, or certified general real property appraiser whenever he or she identifies himself or herself as a real property appraiser, including on all reports which are signed individually or as cosigner.

(2) The terms registered real property appraiser, licensed real property appraiser, certified residential real property appraiser, and certified general real property appraiser may only be used to refer to a person who is credentialed as such under the Real Property Appraiser Act and may not be used following or immediately in connection with the name or signature of a corporation, partnership, limited liability company, firm, or group or in such manner that it might be interpreted as referring to a corporation, partnership, limited liability company, firm, or group or to anyone other than the credential holder. This requirement shall not be construed to prevent a credential holder from signing an appraisal report on behalf of a corporation, partnership, limited liability company, firm, or group if it is clear that only the individual holds the credential and that the corporation, partnership, limited liability company, firm, or group does not.

Source: Laws 1990, LB 1153, § 29; Laws 1991, LB 203, § 30; Laws 1993, LB 121, § 491; Laws 1994, LB 1107, § 25; Laws 2001, LB 162, § 20; Laws 2006, LB 778, § 50; Laws 2007, LB186, § 13.
Effective date September 1, 2007.

76-2229.01 Credential as a registered real property appraiser; applicant; qualifications. (1) To qualify for a credential as a registered real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b) Hold a high school diploma or a certificate of high school equivalency or have education acceptable to the board;

(c) Have successfully completed no fewer than ninety class hours in board-approved courses of study which relate to appraisal and which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, or its equivalent as approved by the Appraiser Qualifications Board. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, or such other educational provider as may be approved by the board and shall be, at a minimum, fifteen class hours in length. Each course of study shall include an examination pertinent to the material presented;

(d) Pass an examination administered by the board which demonstrates that the applicant has:

(i) Knowledge of technical terms commonly used in or related to appraisal and the writing of appraisal reports;

(ii) Knowledge of depreciation theories, cost estimating, methods of capitalization, market data analysis, appraisal mathematics, and economic concepts applicable to real estate;

(iii) An understanding of the basic principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and processing of data involved in the valuation of real property;

(iv) Knowledge of the appraisal of various types of and interests in real property for various functions and purposes;

(v) An understanding of basic real estate law;

(vi) An understanding of the types of misconduct for which disciplinary proceedings may be initiated;

(vii) An understanding of the Uniform Standards of Professional Appraisal Practice;

(viii) An understanding of the recognized methods and techniques necessary for the development and communication of a credible appraisal; and

(ix) Knowledge of such other principles and procedures as may be appropriate to produce a credible appraisal; and

(e) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) The application for registration shall include the applicant's social security number and such other information as the board may require.

(3) On and after January 1, 2008, the scope of practice of a registered real property appraiser shall be limited to the appraisal of noncomplex property having one, two, three, or four residential units having a transaction value of less than two hundred fifty thousand dollars.

(4) On and after January 1, 2008, an applicant shall receive no more than three successive annual renewals for credentialing as a registered real property appraiser. Notwithstanding any other provision of section 76-2228 to the contrary, the board shall not approve any initial application for credentialing as a registered real property appraiser on and after January 1, 2012.

Source: Laws 1991, LB 203, § 31; Laws 1994, LB 1107, § 26; Laws 1997, LB 752, § 204; Laws 2001, LB 162, § 21; Laws 2006, LB 778, § 51; Laws 2007, LB186, § 14.
Effective date September 1, 2007.

76-2230 Credential as a licensed real property appraiser; applicant; qualifications. (1) Prior to January 1, 2008, to qualify for a credential as a licensed real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b) Hold a high school diploma or a certificate of high school equivalency or have education acceptable to the board;

(c) Have successfully completed no fewer than ninety class hours, which may include the class hours set forth in section 76-2229.01, in board-approved courses of study which relate to appraisal and which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, or its equivalent as approved by the Appraiser Qualifications Board. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, or such other educational provider as may be approved by the board and shall be, at a minimum,

fifteen class hours in length. Each course shall include an examination pertinent to the material presented;

(d) Have no fewer than two years of experience in any combination of the following: Fee and staff appraisal; ad valorem tax appraisal; review appraisal; appraisal analysis; highest-and-best-use analysis; or feasibility analysis or study. The required experience shall not be limited to the listed items but shall be acceptable to the board and subject to review and determination as to conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall include a total of at least two thousand hours and shall have occurred over at least a twenty-four-month period. If requested, evidence acceptable to the board concerning the experience shall be presented by the applicant in the form of written reports or file memoranda;

(e) Pass an examination administered by the board which demonstrates that the applicant has:

(i) Knowledge of technical terms commonly used in or related to appraisal and the writing of appraisal reports;

(ii) Knowledge of depreciation theories, cost estimating, methods of capitalization, market data analysis, appraisal mathematics, and economic concepts applicable to real estate;

(iii) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and processing of data involved in the valuation of real property;

(iv) Knowledge of the appraisal of various types of and interests in real property for various functions and purposes;

(v) An understanding of basic real estate law;

(vi) An understanding of the types of misconduct for which disciplinary proceedings may be initiated;

(vii) An understanding of the Uniform Standards of Professional Appraisal Practice;

(viii) An understanding of the recognized methods and techniques necessary for the development and communication of a credible appraisal; and

(ix) Knowledge of such other principles and procedures as may be appropriate to produce a credible appraisal; and

(f) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) On and after January 1, 2008, to qualify for a credential as a licensed real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b) Hold a high school diploma or a certificate of high school equivalency or have education acceptable to the board;

(c) Have successfully completed no fewer than one hundred fifty class hours, which may include the class hours set forth in section 76-2229.01, in board-approved courses of study which relate to appraisal and which include completion of the fifteen-hour National

Uniform Standards of Professional Appraisal Practice Course, or its equivalent as approved by the Appraiser Qualifications Board. The fifteen-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board and shall be, at a minimum, fifteen class hours in length. Each course shall include a closed-book examination pertinent to the material presented;

(d) Have no fewer than two thousand hours of experience in any combination of the following: Fee and staff appraisal; ad valorem tax appraisal; condemnation appraisal; technical review appraisal; appraisal analysis; real estate consulting; highest-and-best-use analysis; and feasibility analysis or study. The required experience shall not be limited to the listed items but shall be acceptable to the board and subject to review and determination as to conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall have occurred during a period of no fewer than twelve months. If requested, evidence acceptable to the board concerning the experience shall be presented by the applicant in the form of written reports or file memoranda;

(e) Within the twenty-four months following approval of the applicant by the board, pass a closed-book examination administered by the board which demonstrates that the applicant has:

(i) Knowledge of technical terms commonly used in or related to appraisal and the writing of appraisal reports;

(ii) Knowledge of depreciation theories, cost estimating, methods of capitalization, market data analysis, appraisal mathematics, and economic concepts applicable to real estate;

(iii) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and processing of data involved in the valuation of real property;

(iv) Knowledge of the appraisal of various types of and interests in real property for various functions and purposes;

(v) An understanding of basic real estate law;

(vi) An understanding of the types of misconduct for which disciplinary proceedings may be initiated;

(vii) An understanding of the Uniform Standards of Professional Appraisal Practice;

(viii) An understanding of the recognized methods and techniques necessary for the development and communication of a credible appraisal; and

(ix) Knowledge of such other principles and procedures as may be appropriate to produce a credible appraisal; and

(f) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(3) On and after January 1, 2008, the scope of practice for a licensed real property appraiser shall be limited to the appraisal of noncomplex property having one, two, three, or four residential units with a transaction value of less than one million dollars and complex property having one, two, three, or four residential units with a transaction value of less than two hundred fifty thousand dollars.

(4) If an applicant is applying for renewal of a credential as a licensed real property appraiser on and after January 1, 2008, the applicant shall have successfully completed no fewer than fourteen hours of instruction in courses or seminars for each year of the two-year continuing education period during which the application is submitted and shall have completed the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent as approved by the Appraiser Qualifications Board, at a minimum of every two years. The seven-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. Credit toward a classroom hour requirement may be granted only when the length of the educational offering is at least two hours. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board. Credit may be granted for educational offerings and for participation other than as a student as approved by the board.

(5) If, prior to January 1, 2008, an applicant for a credential as a licensed real property appraiser has satisfied the requirements for education, experience, or examination, as the requirements for each component are described in subdivisions (1)(c), (d), and (e) of this section, respectively, the board shall deem the applicant to have met the requirements for that component for purposes of credentialing. If the applicant has not met the requirements for a component prior to January 1, 2008, the applicant shall be required to meet the applicable requirements for that component as described in subdivision (2)(c), (d), or (e) of this section.

(6) The application for the credential as a licensed real property appraiser shall include the applicant's social security number and such other information as the board may require.

Source: Laws 1990, LB 1153, § 30; Laws 1991, LB 203, § 33; Laws 1994, LB 1107, § 28; Laws 1997, LB 29, § 1; Laws 1997, LB 752, § 205; Laws 2001, LB 162, § 22; Laws 2006, LB 778, § 52; Laws 2007, LB186, § 15.
Effective date September 1, 2007.

76-2231.01 Credential as a certified residential real property appraiser; applicant; qualifications. (1) Prior to January 1, 2008, to qualify for a credential as a certified residential real property appraiser, an applicant shall:

- (a) Be at least nineteen years of age;
- (b) Hold a high school diploma or a certificate of high school equivalency or have education acceptable to the board;

(c) Have successfully completed no fewer than one hundred twenty class hours, which may include the class hours set forth in sections 76-2229.01 and 76-2230, in board-approved courses of study which relate to appraisal and which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, or its equivalent as approved by the Appraiser Qualifications Board. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, or such other educational provider as may be approved by the board and shall be, at a minimum, fifteen class hours in length. Each course shall include an examination pertinent to the material presented;

(d) Have no fewer than two years of experience in any combination of the following: Fee and staff appraisal; ad valorem tax appraisal; review appraisal; appraisal analysis; highest-and-best-use analysis; or feasibility analysis or study. The required experience shall not be limited to the listed items but shall be acceptable to the board and subject to review and determination as to conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall include a total of at least two thousand five hundred hours and shall have occurred over no less than a twenty-four-month period. If requested, evidence acceptable to the board concerning the experience shall be presented by the applicant in the form of written reports or file memoranda. Of the two thousand five hundred hours, one thousand five hundred hours shall be in residential appraisal work. For purposes of determining residential appraisal work, residential appraisal work shall be the appraisal of property having one to four residential units;

(e) Pass an examination administered by the board which demonstrates that the applicant has:

(i) Knowledge of technical terms commonly used in or related to appraisals and the writing of appraisal reports;

(ii) An understanding of the basic principles of land economics, appraisal processes, and problems encountered in gathering, interpreting, and processing of data involved in the valuation of real property;

(iii) An understanding of the recognized methods and techniques necessary for the development and communication of credible appraisals as provided in the Real Property Appraiser Act;

(iv) An understanding of the Uniform Standards of Professional Appraisal Practice;

(v) Knowledge of depreciation theories, cost estimating, methods of capitalization, appraisal mathematics, and economic concepts applicable to real estate;

(vi) Knowledge of such other principles and procedures as may be appropriate for certification;

(vii) An understanding of real estate law; and

(viii) An understanding of the types of misconduct for which disciplinary proceedings may be initiated; and

(f) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) On and after January 1, 2008, to qualify for a credential as a certified residential real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b)(i) Hold an associate degree, or higher, from an accredited university, college, community college, or junior college; or

(ii) Have successfully completed, as verified by the board, twenty-one semester hours of coursework or its equivalent from an accredited university, college, community college, or junior college that shall have included English composition; principles of macroeconomics or microeconomics; finance; algebra, geometry, or higher mathematics; statistics; introduction to computers, including word processing and spread sheets; and business or real estate law;

(c) Have successfully completed no fewer than two hundred class hours, which may include the class hours set forth in sections 76-2229.01 and 76-2230, in board-approved courses of study which relate to appraisal and which include completion of the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, or its equivalent as approved by the Appraiser Qualifications Board. The fifteen-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board and shall be, at a minimum, fifteen class hours in length. Credit toward the class hour requirement may be awarded to teachers of appraisal courses. Each course shall include a closed-book examination pertinent to the material presented;

(d) Have no fewer than two thousand five hundred hours of experience in any combination of the following: Fee and staff appraisal; ad valorem tax appraisal; condemnation appraisal; technical review appraisal; appraisal analysis; real estate consulting; highest-and-best-use analysis; and feasibility analysis or study. The required experience shall not be limited to the listed items but shall be acceptable to the board and subject to review and determination as to conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall have occurred during a period of no fewer than twenty-four months. If requested, evidence acceptable to the board concerning the experience shall be presented by the applicant in the form of written reports or file memoranda;

(e) Within the twenty-four months following approval of the applicant by the board, pass a closed-book examination administered by the board which demonstrates that the applicant has:

(i) Knowledge of technical terms commonly used in or related to appraisal and the writing of appraisal reports;

(ii) Knowledge of depreciation theories, cost estimating, methods of capitalization, market data analysis, appraisal mathematics, and economic concepts applicable to real estate;

(iii) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and processing of data involved in the valuation of real property;

(iv) Knowledge of the appraisal of various types of and interests in real property for various functions and purposes;

(v) An understanding of basic real estate law;

(vi) An understanding of the types of misconduct for which disciplinary proceedings may be initiated;

(vii) An understanding of the Uniform Standards of Professional Appraisal Practice;

(viii) An understanding of the recognized methods and techniques necessary for the development and communication of a credible appraisal; and

(ix) Knowledge of such other principles and procedures as may be appropriate to produce a credible appraisal; and

(f) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(3) On and after January 1, 2008, the scope of practice of a certified residential real property appraiser shall be limited to the appraisal of property having one, two, three, or four residential units without regard to transaction value or complexity.

(4) If an applicant is applying for renewal of a credential as a certified residential real property appraiser on and after January 1, 2008, the applicant shall have successfully completed no fewer than fourteen hours of instruction in courses or seminars for each year of the two-year continuing education period during which the application is submitted and shall have completed the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent as approved by the Appraiser Qualifications Board, at a minimum of every two years. The seven-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. Credit toward a classroom hour requirement may be granted only if the length of the educational offering is at least two hours. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board. Credit may be granted for educational offerings and for participation other than as a student as approved by the board.

(5) If, prior to January 1, 2008, an applicant for a credential as a certified residential real property appraiser has satisfied the requirements for education, experience, or examination, as the requirements for each component are described in subdivisions (1)(c), (d), and (e) of this section, respectively, the board shall deem the applicant to have met the requirements for that component for purposes of credentialing. If the applicant has not met the requirements for a component prior to January 1, 2008, the applicant shall be required to meet the applicable requirements for that component as described in subdivision (2)(c), (d), or (e) of this section.

(6) The application for a credential as a certified residential real property appraiser shall include the applicant's social security number and such other information as the board may require.

Source: Laws 1994, LB 1107, § 29; Laws 1997, LB 29, § 2; Laws 1997, LB 752, § 206; Laws 2001, LB 162, § 23; Laws 2006, LB 778, § 53; Laws 2007, LB186, § 16.
Effective date September 1, 2007.

76-2232 Credential as a certified general real property appraiser; applicant; qualifications. (1) Prior to January 1, 2008, to qualify for a credential as a certified general real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b) Hold a high school diploma or a certificate of high school equivalency or have education acceptable to the board;

(c) Have successfully completed no fewer than one hundred eighty class hours, which may include the class hours set forth in sections 76-2229.01, 76-2230, and 76-2231.01, in board-approved courses of study which relate to appraisal and which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, or its equivalent as approved by the Appraiser Qualifications Board. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, or such other educational provider as may be approved by the board and shall be, at a minimum, fifteen class hours in length. Each course shall include an examination pertinent to the material presented;

(d) Have two and one-half years of experience in any combination of the following: Fee and staff appraisal; ad valorem tax appraisal; review appraisal; appraisal analysis; highest-and-best-use analysis; or feasibility analysis or study. The required experience shall not be limited to the listed items but shall be acceptable to the board and conform with the Uniform Standards of Professional Appraisal Practice. The experience shall include a total of at least three thousand hours and shall have occurred over at least a thirty-month period. If requested, evidence acceptable to the board concerning the experience shall be presented by the applicant in the form of written reports or file memoranda. Of the three thousand hours, one thousand five hundred hours shall be in nonresidential appraisal work. For purposes of determining nonresidential appraisal work, residential appraisal work shall be the appraisal of property having one to four residential units;

(e) Pass an examination administered by the board which demonstrates that the applicant has:

(i) Knowledge of technical terms commonly used in or related to appraisals and the writing of appraisal reports;

(ii) An understanding of the principles of land economics, appraisal processes, and problems encountered in gathering, interpreting, and processing of data involved in the valuation of real property;

(iii) An understanding of the recognized methods and techniques necessary for the development and communication of credible appraisals as provided in the Real Property Appraiser Act;

(iv) An understanding of the Uniform Standards of Professional Appraisal Practice;

(v) Knowledge of depreciation theories, cost estimating, methods of capitalization, appraisal mathematics, and economic concepts applicable to real estate;

(vi) Knowledge of such other principles and procedures as may be appropriate for general certification;

(vii) An understanding of real estate law; and

(viii) An understanding of the types of misconduct for which disciplinary proceedings may be initiated; and

(f) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) On and after January 1, 2008, to qualify for a credential as a certified general real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b)(i) Hold a bachelor's degree, or higher, from an accredited university or college; or

(ii) Have successfully completed, as verified by the board, thirty semester hours of coursework or its equivalent from an accredited university or college that shall have included English composition; macroeconomics; microeconomics; finance; algebra, geometry, or higher mathematics; statistics; introduction to computers, including word processing and spread sheets; business or real estate law; and two elective courses in accounting, geography, agricultural economics, business management, or real estate;

(c) Have successfully completed no fewer than three hundred class hours, which may include the class hours set forth in sections 76-2229.01, 76-2230, and 76-2231.01, in board-approved courses of study which relate to appraisal and which include completion of the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, or its equivalent as approved by the Appraiser Qualifications Board. The fifteen-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the board and shall be, at a minimum, fifteen class hours in length. Credit toward the class hour requirement may be awarded to teachers of appraisal courses. Each course shall include a closed-book examination pertinent to the material presented;

(d) Have no fewer than three thousand hours of experience in any combination of the following: Fee and staff appraisal; ad valorem tax appraisal; condemnation appraisal; technical review appraisal; appraisal analysis; real estate consulting; highest-and-best-use analysis; and feasibility analysis or study. The required experience shall not be limited to the listed items but shall be acceptable to the board and subject to review and determination as to

conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall have occurred during a period of no fewer than thirty months. If requested, evidence acceptable to the board concerning the experience shall be presented by the applicant in the form of written reports or file memoranda;

(e) Within the twenty-four months following approval of the applicant by the board, pass a closed-book examination administered by the board which demonstrates that the applicant has:

(i) Knowledge of technical terms commonly used in or related to appraisal and the writing of appraisal reports;

(ii) Knowledge of depreciation theories, cost estimating, methods of capitalization, market data analysis, appraisal mathematics, and economic concepts applicable to real estate;

(iii) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and processing of data involved in the valuation of real property;

(iv) Knowledge of the appraisal of various types of and interests in real property for various functions and purposes;

(v) An understanding of basic real estate law;

(vi) An understanding of the types of misconduct for which disciplinary proceedings may be initiated;

(vii) An understanding of the Uniform Standards of Professional Appraisal Practice;

(viii) An understanding of the recognized methods and techniques necessary for the development and communication of a credible appraisal; and

(ix) Knowledge of such other principles and procedures as may be appropriate to produce a credible appraisal; and

(f) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(3) If an applicant is applying for renewal of a credential as a certified general real property appraiser on and after January 1, 2008, the applicant shall have successfully completed no fewer than fourteen hours of instruction in courses or seminars for each year of the two-year continuing education period during which the application is submitted and shall have completed the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent as approved by the Appraiser Qualifications Board, at a minimum of every two years. The seven-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. Credit toward a classroom hour requirement may be granted only if the length of the educational offering is at least two hours. The courses of study shall be conducted by an accredited university, college, community college, or junior college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be

approved by the board. Credit may be granted for educational offerings and for participation other than as a student as approved by the board.

(4) If, prior to January 1, 2008, an applicant for a credential as a certified general real property appraiser has satisfied the requirements for education, experience, or examination, as the requirements for each component are described in subdivisions (1)(c), (d), and (e) of this section, respectively, the board shall deem the applicant to have met the requirements for that component for purposes of credentialing. If the applicant has not met the requirements for a component prior to January 1, 2008, the applicant shall be required to meet the applicable requirements for that component as described in subdivision (2)(c), (d), or (e) of this section.

(5) The application for a credential as a certified general real property appraiser shall include the applicant's social security number and such other information as the board may require.

Source: Laws 1990, LB 1153, § 32; Laws 1991, LB 203, § 34; Laws 1994, LB 1107, § 30; Laws 1997, LB 29, § 3; Laws 1997, LB 752, § 207; Laws 2001, LB 162, § 24; Laws 2006, LB 778, § 54; Laws 2007, LB186, § 17.
Effective date September 1, 2007.

76-2233 Nonresident; credential; issuance; when; waiver authorized. (1) A nonresident of this state may obtain a credential as a licensed real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser by (a) complying with all of the provisions of the Real Property Appraiser Act relating to the appropriate classification of credentialing, (b) submitting an application on a form approved by the board, and (c) submitting an irrevocable consent that service of process upon him or her may be made by delivery of the process to the director of the board if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant in an action against the applicant in a court of this state arising out of the applicant's activities in this state.

(2) If, in the determination of the board, another state or territory or the District of Columbia has substantially equivalent requirements to the requirements of this state, an applicant who is a resident of that state, territory, or district and is currently credentialed to appraise real estate and real property under the laws of that state, territory, or district may through reciprocity become credentialed under the act. To qualify for reciprocal credentialing, the applicant shall:

(a) Submit evidence that he or she is currently a resident of the state, territory, or District of Columbia in which he or she is credentialed to appraise real estate and real property and that such credential is in good standing, along with his or her social security number and such other information as the board may require;

(b) Certify that disciplinary proceedings are not pending against him or her or state the nature of any pending disciplinary proceedings;

(c) Submit an irrevocable consent that service of process upon him or her may be made by delivery of the process to the director of the board if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant in an action against the applicant in a court of this state arising out of the applicant's activities as a real property appraiser in this state;

(d) Pay fees as established in section 76-2241; and

(e) Comply with such other terms and conditions as may be determined by the board.

The board may waive the residence requirement of this subsection under special residency circumstances.

Source: Laws 1990, LB 1153, § 33; Laws 1991, LB 203, § 35; Laws 1994, LB 1107, § 31; Laws 1997, LB 752, § 208; Laws 2001, LB 162, § 25; Laws 2006, LB 778, § 55; Laws 2007, LB186, § 18.
Effective date September 1, 2007.

76-2233.01 Nonresident; temporary credential; issuance; when. A nonresident may obtain a temporary credential as a licensed real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser to perform a contract relating to the appraisal of real estate or real property in this state. To qualify for the issuance of a temporary credential, an applicant shall:

(1) Submit an application on a form approved by the board;

(2) Submit an irrevocable consent that service of process upon him or her may be made by delivery of the process to the director of the board if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant in an action against the applicant in a court of this state arising out of the applicant's activities in this state;

(3) Submit evidence that he or she is credentialed as a licensed or certified appraiser of real estate and real property and is currently in good standing in the jurisdiction of residency, along with his or her social security number and such other information as the board may require;

(4) Certify that disciplinary proceedings are not pending against the applicant in the applicant's state of domicile or in any other jurisdiction or state the nature of any pending disciplinary proceedings; and

(5) Pay an application fee in an amount established by the board.

A temporary credential issued under this section shall be expressly limited to a grant of authority to perform the appraisal work required by the contract for appraisal services in this state. Each temporary credential shall expire upon the completion of the appraisal work required by the contract for appraisal services or upon the expiration of a period of six months from the date of issuance, whichever occurs first. A temporary credential may be renewed for one additional six-month period.

Source: Laws 1991, LB 203, § 36; Laws 1994, LB 1107, § 32; Laws 1997, LB 752, § 209; Laws 2001, LB 162, § 26; Laws 2006, LB 778, § 56; Laws 2007, LB186, § 19.
Effective date September 1, 2007.

76-2236 Continuing education; requirements; extension or waiver. Every credential holder shall furnish evidence to the board that he or she has satisfactorily completed no fewer than twenty-eight hours of approved continuing education activities in each two-year continuing education period. Hours of satisfactorily completed approved continuing education activities cannot be carried over from one two-year continuing education period to another. The board may extend or waive the continuing education requirements by rule or regulation. As prescribed by rule or regulation of the board and at least once every two

years, the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course, or its equivalent as approved by the Appraiser Qualifications Board, shall be included in the continuing education requirement of each credential holder. The board shall approve continuing education activities which it determines would protect the public by improving the competency of credential holders. Evidence of completion of such continuing education activities for the two-year continuing education period may be submitted to the board as each activity is completed. A person who holds a temporary credential shall not have to meet any continuing education requirements in this state.

Source: Laws 1990, LB 1153, § 36; Laws 1991, LB 203, § 40; Laws 1994, LB 1107, § 37; Laws 1997, LB 29, § 4; Laws 2001, LB 162, § 28; Laws 2006, LB 778, § 58; Laws 2007, LB186, § 20.
Effective date September 1, 2007.

76-2237 Uniform Standards of Professional Appraisal Practice; rules and regulations. Each credential holder shall comply with the Uniform Standards of Professional Appraisal Practice. The board shall adopt and promulgate rules and regulations which conform to the Uniform Standards of Professional Appraisal Practice. The board shall review such rules and regulations annually. A copy of each such rule or regulation shall be mailed to the business address of each credential holder.

Source: Laws 1990, LB 1153, § 37; Laws 1991, LB 203, § 41; Laws 1994, LB 1107, § 38; Laws 2001, LB 162, § 29; Laws 2006, LB 778, § 59; Laws 2007, LB186, § 21.
Effective date September 1, 2007.

76-2241 Fees. The board shall charge and collect appropriate fees for its services under the Real Property Appraiser Act as follows:

- (1) An application fee of one hundred fifty dollars;
- (2) An examination fee of no more than three hundred dollars. The board may direct applicants to pay the fee directly to a third party who has contracted to administer the examination;
- (3) An initial and renewal credentialing fee, other than temporary credentialing, of no more than three hundred dollars;
- (4) A late renewal fee of twenty-five dollars for each month or portion of a month the fee is late; and
- (5) A temporary credential fee for a licensed real property appraiser of no more than one hundred fifty dollars and a temporary credential fee for a certified residential real property appraiser or a certified general real property appraiser of no more than two hundred dollars.

All fees for credentialing through reciprocity shall be the same as those paid by others pursuant to this section.

In addition to the fees set forth in this section, the board may collect and transmit to the appropriate federal authority any fees established under the provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as the act existed on January 1, 2006. The board may establish such fees as it deems appropriate for special examinations and other services provided by the board. All fees and other revenue collected pursuant to the

Real Property Appraiser Act shall be remitted by the board to the State Treasurer for credit to the Real Property Appraiser Fund.

Source: Laws 1990, LB 1153, § 41; Laws 1991, LB 203, § 45; Laws 1994, LB 1107, § 42; Laws 2001, LB 162, § 33; Laws 2006, LB 778, § 62; Laws 2007, LB186, § 22.
Effective date September 1, 2007.

76-2242 Credential holder; proof of credentials; issuance. (1) The board shall provide to each credential holder proof that such person has been credentialed under the Real Property Appraiser Act for the classification requirements set forth in the act. The board shall also issue a pocket card in such size and form as it may approve.

(2) Each credential issued under the act shall designate the principal place of business of the credential holder.

(3) Proof of credentialing and pocket cards issued by the board shall remain the property of the state, and upon surrender, cancellation, suspension, or revocation, any person holding the documents shall immediately return such documents to the board.

Source: Laws 1990, LB 1153, § 42; Laws 1991, LB 203, § 46; Laws 1994, LB 1107, § 43; Laws 2001, LB 162, § 34; Laws 2006, LB 778, § 63; Laws 2007, LB186, § 23.
Effective date September 1, 2007.

76-2247.01 Services; authorized; contingent fee prohibited; when. A person may retain or employ a real property appraiser credentialed under the Real Property Appraiser Act to provide appraisal services, including, but not limited to, valuation assignments and consulting services. In each case, the appraisal and the appraisal report shall comply with the Real Property Appraiser Act and the Uniform Standards of Professional Appraisal Practice.

In a valuation assignment, the real property appraiser shall remain an impartial, disinterested third party. When providing a consulting service, the real property appraiser may complete the evaluation assignment in a manner that responds to a client's stated objective but shall also remain an impartial, disinterested third party. Compensation of a real property appraiser for either a valuation assignment or consulting service shall not be contingent upon the real property appraiser reporting a predetermined analysis, opinion, or conclusion reached or upon the results achieved.

Source: Laws 1991, LB 203, § 51; Laws 1994, LB 1107, § 45; Laws 2001, LB 162, § 39; Laws 2006, LB 778, § 67; Laws 2007, LB186, § 24.
Effective date September 1, 2007.

CHAPTER 77

REVENUE AND TAXATION

Article.

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ARTICLE 1

DEFINITIONS

Section.

77-103. Real property, defined.

77-105. Tangible personal property, intangible personal property, defined.

77-103 Real property, defined. Real property shall mean:

(1) All land;

(2) All buildings, improvements, and fixtures, except trade fixtures;

(3) Mobile homes, cabin trailers, and similar property, not registered for highway use, which are used, or designed to be used, for residential, office, commercial, agricultural, or other similar purposes, but not including mobile homes, cabin trailers, and similar property when unoccupied and held for sale by persons engaged in the business of selling such property when such property is at the location of the business;

(4) Mines, minerals, quarries, mineral springs and wells, oil and gas wells, overriding royalty interests, and production payments with respect to oil or gas leases; and

(5) All privileges pertaining to real property described in subdivisions (1) through (4) of this section.

Source: Laws 1903, c. 73, § 1, p. 389; R.S.1913, § 6289; Laws 1921, c. 133, art. I, § 2, p. 545; C.S.1922, § 5809; C.S.1929, § 77-102; R.S.1943, § 77-103; Laws 1951, c. 257, § 1, p. 881; Laws 1961, c. 372, § 1, p. 1147; Laws 1969, c. 638, § 1, p. 2551; Laws 1989, Spec. Sess., LB 1, § 1; Laws 1991, LB 829, § 5; Laws 1992, LB 1063, § 44; Laws 1992, Second Spec. Sess., LB 1, § 43; Laws 1997, LB 270, § 3; Laws 2007, LB334, § 13.
Operative date July 1, 2007.

77-105 Tangible personal property, intangible personal property, defined. The term tangible personal property includes all personal property possessing a physical existence, excluding money. The term tangible personal property also includes trade fixtures, which means machinery and equipment, regardless of the degree of attachment to real property, used directly in commercial, manufacturing, or processing activities conducted on real property, regardless of whether the real property is owned or leased. The term intangible personal property includes all other personal property, including money.

Source: Laws 1921, c. 133, art. I, § 4, p. 545; C.S.1922, § 5811; C.S.1929, § 77-104; Laws 1933, c. 156, § 2, p. 592; C.S.Supp.,1941, § 77-104; R.S.1943, § 77-105; Laws 1991, LB 829, § 6; Laws 2007, LB334, § 14.
Operative date July 1, 2007.

ARTICLE 2

PROPERTY TAXABLE, EXEMPTIONS, LIENS

Section.

- 77-201. Property taxable; valuation; classification.
- 77-202.01. Property taxable; tax exemptions; application; waiver of deadline; penalty; lien.
- 77-202.02. Property taxable; exempt status; application; hearing; procedure.
- 77-202.03. Property taxable; exempt status; period of exemption; change of status; late filing authorized; when; penalty; lien; new applications; reviewed; hearing; procedure; list.
- 77-202.04. Property taxable; exempt status; appeal; failure to give notice; effect.
- 77-202.05. Property taxable; exempt status; Tax Commissioner; forms; prescribe; contents.
- 77-202.09. Cemetery organization; exemption; application; procedure; late filing.
- 77-202.12. Public property; taxation status; county assessor; duties; appeal.
- 77-202.13. County assessor; report required; data base required.

77-201 Property taxable; valuation; classification. (1) Except as provided in subsections (2) through (4) of this section, all real property in this state, not expressly exempt therefrom, shall be subject to taxation and shall be valued at its actual value.

(2) Agricultural land and horticultural land as defined in section 77-1359 shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, unless expressly exempt from taxation, and shall be valued at seventy-five percent of its actual value.

(3) Agricultural land and horticultural land actively devoted to agricultural or horticultural purposes which has value for purposes other than agricultural or horticultural uses and which meets the qualifications for special valuation under section 77-1344 shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, and shall be valued for taxation at seventy-five percent of its special value as defined in section 77-1343 and at seventy-five percent of its actual value when the land is disqualified for special valuation under section 77-1347.

(4) Commencing January 1, 2006, historically significant real property which meets the qualifications for historic rehabilitation valuation under sections 77-1385 to 77-1394 shall be valued for taxation as provided in such sections.

(5) Tangible personal property, not including motor vehicles registered for operation on the highways of this state, shall constitute a separate and distinct class of property for purposes of property taxation, shall be subject to taxation, unless expressly exempt from taxation, and shall be valued at its net book value. Tangible personal property transferred as a gift or devise or as part of a transaction which is not a purchase shall be subject to taxation based upon the

date the property was acquired by the previous owner and at the previous owner's Nebraska adjusted basis. Tangible personal property acquired as replacement property for converted property shall be subject to taxation based upon the date the converted property was acquired and at the Nebraska adjusted basis of the converted property unless insurance proceeds are payable by reason of the conversion. For purposes of this subsection, (a) converted property means tangible personal property which is compulsorily or involuntarily converted as a result of its destruction in whole or in part, theft, seizure, requisition, or condemnation, or the threat or imminence thereof, and no gain or loss is recognized for federal or state income tax purposes by the holder of the property as a result of the conversion and (b) replacement property means tangible personal property acquired within two years after the close of the calendar year in which tangible personal property was converted and which is, except for date of construction or manufacture, substantially the same as the converted property.

Source: Laws 1903, c. 73, § 12, p. 390; R.S.1913, § 6300; Laws 1921, c. 133, art. II, § 1, p. 546; C.S.1922, § 5820; C.S.1929, § 77-201; Laws 1939, c. 102, § 1, p. 461; C.S.Supp.,1941, § 77-201; R.S.1943, § 77-201; Laws 1953, c. 265, § 1, p. 877; Laws 1955, c. 289, § 2, p. 918; Laws 1957, c. 320, § 2, p. 1138; Laws 1959, c. 353, § 1, p. 1244; Laws 1979, LB 187, § 191; Laws 1985, LB 30, § 2; Laws 1985, LB 271, § 2; Laws 1986, LB 816, § 1; Laws 1989, LB 361, § 5; Laws 1991, LB 404, § 2; Laws 1991, LB 320, § 2; Laws 1992, LB 1063, § 52; Laws 1992, Second Spec. Sess., LB 1, § 50; Laws 1997, LB 269, § 34; Laws 1997, LB 270, § 11; Laws 1997, LB 271, § 38; Laws 2004, LB 973, § 6; Laws 2005, LB 66, § 11; Laws 2006, LB 808, § 24; Laws 2006, LB 968, § 2; Laws 2007, LB166, § 3.
Effective date March 8, 2007.

77-202.01 Property taxable; tax exemptions; application; waiver of deadline; penalty; lien. (1) Any organization or society seeking a tax exemption provided in subdivisions (1)(c) and (d) of section 77-202 for any real or tangible personal property, except real property used for cemetery purposes, shall apply for exemption to the county assessor on or before December 31 of the year preceding the year for which the exemption is sought on forms prescribed by the Tax Commissioner. The county assessor shall examine the application and recommend either taxable or exempt for the real property or tangible personal property to the county board of equalization on or before February 1 following. Notice that a list of the applications from organizations seeking tax exemption, descriptions of the property, and recommendations of the county assessor are available in the county assessor's office shall be published in a newspaper of general circulation in the county at least ten days prior to consideration of any application by the county board of equalization.

(2) Any organization or society which fails to file an exemption application on or before December 31 may apply on or before June 30 to the county assessor. The organization or society shall also file in writing a request with the county board of equalization for a waiver so that the county assessor may consider the application for exemption. The county board of equalization shall grant the waiver upon a finding that good cause exists for the failure to make application on or before December 31. When the waiver is granted, the county assessor shall examine the application and recommend either taxable or exempt for the real property or tangible personal property to the county board of equalization and shall assess a penalty

against the property of ten percent of the tax that would have been assessed had the waiver been denied or one hundred dollars, whichever is less, for each calendar month or fraction thereof for which the filing of the exemption application missed the December 31 deadline. The penalty shall be collected and distributed in the same manner as a tax on the property and interest shall be assessed 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 would have been delinquent until paid. The penalty shall also become a lien in the same manner as a tax pursuant to section 77-203.

Source: Laws 1963, c. 441, § 1, p. 1460; Laws 1969, c. 639, § 1, p. 2552; Laws 1980, LB 688, § 1; Laws 1984, LB 835, § 2; Laws 1986, LB 817, § 1; Laws 1993, LB 346, § 7; Laws 1993, LB 345, § 4; Laws 1995, LB 490, § 28; Laws 1996, LB 1122, § 1; Laws 1997, LB 270, § 12; Laws 1997, LB 271, § 40; Laws 1999, LB 194, § 10; Laws 1999, LB 271, § 5; Laws 2000, LB 968, § 26; Laws 2007, LB334, § 15.
Operative date July 1, 2007.

77-202.02 Property taxable; exempt status; application; hearing; procedure. The county board of equalization, between February 1 and June 1 after a hearing on ten days' notice to the applicant and the publication of notice as provided in section 77-202.01, and after considering the recommendation of the county assessor and any other information it may obtain from public testimony, shall grant or withhold tax exemption for the real property or tangible personal property on the basis of law and of regulations promulgated by the Tax Commissioner.

For applications accepted after approval of a waiver pursuant to section 77-202.01, the county board of equalization shall hear and certify its decision on or before August 15.

Source: Laws 1963, c. 441, § 2, p. 1460; Laws 1969, c. 640, § 1, p. 2553; Laws 1980, LB 688, § 2; Laws 1995, LB 490, § 29; Laws 1997, LB 270, § 13; Laws 1997, LB 271, § 41; Laws 2000, LB 968, § 27; Laws 2003, LB 292, § 9; Laws 2005, LB 263, § 4; Laws 2007, LB334, § 16.
Operative date July 1, 2007.

77-202.03 Property taxable; exempt status; period of exemption; change of status; late filing authorized; when; penalty; lien; new applications; reviewed; hearing; procedure; list. (1) A properly granted exemption of real or tangible personal property, except real property used for cemetery purposes, provided for in subdivisions (1)(c) and (d) of section 77-202 shall continue for a period of four years if the statement of reaffirmation of exemption required by subsection (2) of this section is filed when due. The four-year period shall begin with years evenly divisible by four.

(2) In each intervening year occurring between application years, the organization or society which filed the granted exemption application for the real or tangible personal property, except real property used for cemetery purposes, shall file a statement of reaffirmation of exemption with the county assessor on or before December 31 of the year preceding the year for which the exemption is sought, on forms prescribed by the Tax Commissioner, certifying that the ownership and use of the exempted property has not changed during the year. Any organization or society which misses the December 31 deadline for filing the statement of reaffirmation of exemption may file the statement of reaffirmation of exemption by June 30.

Such filing shall maintain the tax-exempt status of the property without further action by the county and regardless of any previous action by the county board of equalization to deny the exemption due to late filing of the statement of reaffirmation of exemption. Upon any such late filing, the county assessor shall assess a penalty against the property of ten percent of the tax that would have been assessed had the statement of reaffirmation of exemption not been filed or one hundred dollars, whichever is less, for each calendar month or fraction thereof for which the filing of the statement of reaffirmation of exemption is late. The penalty shall be collected and distributed in the same manner as a tax on the property and interest shall be assessed 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 would have been delinquent until paid. The penalty shall also become a lien in the same manner as a tax pursuant to section 77-203.

(3)(a) If any organization or society seeks a tax exemption for any real or tangible personal property acquired on or after January 1 of any year or converted to exempt use on or after January 1 of any year, the organization or society shall make application for exemption on or before August 1 of that year as provided in subsection (1) of section 77-202.01. The procedure for reviewing the application shall be as in sections 77-202.01 to 77-202.05, except that the exempt use shall be determined as of the date of application and the review by the county board of equalization shall be completed by August 15.

(b) If an organization as described in subdivision (1)(c) or (d) of section 77-202 purchases, between August 1 and the levy date, property that has been granted tax exemption and the property continues to be qualified for a property tax exemption, the purchaser shall on or before November 15 make application for exemption as provided in section 77-202.01. The procedure for reviewing the application shall be as in sections 77-202.01 to 77-202.05, and the review by the county board of equalization shall be completed by December 15.

(4) In any year, the county assessor or the county board of equalization may cause a review of any exemption to determine whether the exemption is proper. Such a review may be taken even if the ownership or use of the property has not changed from the date of the allowance of the exemption. If it is determined that a change in an exemption is warranted, the procedure for hearing set out in section 77-202.02 shall be followed, except that the published notice shall state that the list provided in the county assessor's office only includes those properties being reviewed. If an exemption is denied, the county board of equalization shall place the property on the tax rolls retroactive to January 1 of that year if on the date of the decision of the county board of equalization the property no longer qualifies for an exemption.

The county board of equalization shall give notice of the assessed value of the real property in the same manner as outlined in section 77-1507, and the procedures for filing a protest shall be the same as those in section 77-1502.

When personal property which was exempt becomes taxable because of lost exemption status, the owner or his or her agent has thirty days after the date of denial to file a personal property return with the county assessor. Upon the expiration of the thirty days for filing a

personal property return pursuant to this subsection, the county assessor shall proceed to list and value the personal property and apply the penalty pursuant to section 77-1233.04.

(5) During the month of September of each year, the county board of equalization shall cause to be published in a paper of general circulation in the county a list of all real estate in the county exempt from taxation for that year pursuant to subdivisions (1)(c) and (d) of section 77-202. Such list shall be grouped into categories as provided by the Property Tax Administrator. A copy of the list and proof of publication shall be forwarded to the Property Tax Administrator.

Source: Laws 1963, c. 441, § 3, p. 1460; Laws 1965, c. 470, § 1, p. 1517; Laws 1969, c. 641, § 1, p. 2554; Laws 1973, LB 530, § 1; Laws 1973, LB 114, § 1; Laws 1976, LB 786, § 1; Laws 1979, LB 17, § 8; Laws 1980, LB 688, § 3; Laws 1981, LB 179, § 3; Laws 1983, LB 494, § 1; Laws 1986, LB 817, § 2; Laws 1989, LB 133, § 1; Laws 1990, LB 919, § 1; Laws 1993, LB 734, § 42; Laws 1995, LB 490, § 30; Laws 1996, LB 1122, § 2; Laws 1997, LB 270, § 14; Laws 1997, LB 271, § 42; Laws 1998, LB 1104, § 6; Laws 1999, LB 194, § 11; Laws 1999, LB 271, § 6; Laws 2000, LB 968, § 28; Laws 2004, LB 973, § 7; Laws 2007, LB166, § 4; Laws 2007, LB334, § 17.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 166, section 4, with LB 334, section 17, to reflect all amendments.

Note: The changes made by LB 166 became effective March 8, 2007. The changes made by LB 334 became operative July 1, 2007.

77-202.04 Property taxable; exempt status; appeal; failure to give notice; effect. (1) Notice of a county board of equalization's decision granting or denying an application for exemption from taxation for real or tangible personal property shall be mailed or delivered to the applicant and the county assessor by the county clerk within seven days after the date of the board's decision. Persons, corporations, or organizations may appeal denial of an application for exemption by a county board of equalization. Only the county assessor may appeal the grant of such an exemption by a county board of equalization. Appeals pursuant to this section shall be made to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the decision of the county board of equalization. The Tax Commissioner may in his or her discretion intervene in any such appeal pursuant to this section.

(2) Any owner may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the taxable status of real property for that year if a failure to give notice as prescribed by this section prevented timely filing of a protest or appeal provided for in sections 77-202 to 77-202.25.

Source: Laws 1963, c. 441, § 4, p. 1461; Laws 1969, c. 642, § 1, p. 2556; Laws 1995, LB 490, § 31; Laws 1997, LB 271, § 43; Laws 2000, LB 968, § 29; Laws 2004, LB 973, § 8; Laws 2005, LB 15, § 3; Laws 2007, LB334, § 18.
Operative date July 1, 2007.

77-202.05 Property taxable; exempt status; Tax Commissioner; forms; prescribe; contents. The Tax Commissioner shall prescribe forms for distribution to the county assessors on which persons, corporations, and organizations may apply for tax-exempt status for real or tangible personal property. The forms shall include the following information:

- (1) Name of owner or owners of the property, and if a corporation, the names of the officers and directors, and place of incorporation;
- (2) Legal description of real property and a general description as to class and use of all tangible personal property; and
- (3) The precise statutory provision under which exempt status for such property is claimed.

Source: Laws 1963, c. 441, § 5, p. 1461; Laws 1969, c. 643, § 1, p. 2557; Laws 1995, LB 490, § 32; Laws 1997, LB 271, § 44; Laws 2000, LB 968, § 30; Laws 2007, LB334, § 19.
Operative date July 1, 2007.

77-202.09 Cemetery organization; exemption; application; procedure; late filing. Any cemetery organization seeking a tax exemption for any real property used to maintain areas set apart for the interment of human dead shall apply for exemption to the county assessor on forms prescribed by the Tax Commissioner. An application for a tax exemption shall be made on or before December 31 of the year preceding the year for which the exemption is sought. The county assessor shall examine the application and recommend either taxable or exempt to the county board of equalization on or before February 1 following. If a cemetery organization seeks a tax exemption for any real or tangible personal property acquired for or converted to exempt use on or after January 1, the organization shall make application for exemption on or before August 1. The procedure for reviewing the application shall be the same as for other exemptions pursuant to subdivisions (1)(c) and (d) of section 77-202. Any cemetery organization which fails to file on or before December 31 for exemption may apply on or before June 30 pursuant to subsection (2) of section 77-202.01, and the penalty and procedures specified in section 77-202.01 shall apply.

Source: Laws 1997, LB 270, § 16; Laws 1999, LB 271, § 7; Laws 2007, LB334, § 20.
Operative date July 1, 2007.

77-202.12 Public property; taxation status; county assessor; duties; appeal. (1) On or before March 1, the county assessor shall send notice to the state or to any governmental subdivision if it has property not being used for a public purpose upon which a payment in lieu of taxes is not made. Such notice shall inform the state or governmental subdivision that the property will be subject to taxation for property tax purposes. The written notice shall contain the legal description of the property and be given by first-class mail addressed to the state's or governmental subdivision's last-known address. If the property is leased by the state or the governmental subdivision to another entity and the lessor does not intend to pay the taxes for the lessee as allowed under subsection (4) of section 77-202.11, the lessor shall immediately forward the notice to the lessee.

(2) The state, governmental subdivision, or lessee may protest the determination of the county assessor that the property is not used for a public purpose to the county board of equalization on or before April 1. The county board of equalization shall issue its decision on the protest on or before May 1.

(3) The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission on or before June 1. The Tax Commissioner in his or her discretion may intervene in an appeal pursuant to this section.

Source: Laws 1999, LB 271, § 9; Laws 2000, LB 968, § 32; Laws 2005, LB 263, § 5; Laws 2007, LB334, § 21.
Operative date July 1, 2007.

77-202.13 County assessor; report required; data base required. (1) Not later than December 1, 2004, and every fourth December 1 thereafter, the county assessor of each county shall file with the Property Tax Administrator and the county board a report specifying the following information for the then current year:

(a) The legal description and owner of all property owned by the state or a governmental subdivision of the state; and

(b) The legal description and owner of all property subject to taxation pursuant to sections 77-202.11 and 77-202.12.

(2) The Department of Revenue shall use the information reported in subdivision (1)(b) of this section to create and maintain a data base of the information that is available to the public on the web site of the department. The data base shall be searchable by legal description, owner, and tax status.

Source: Laws 2004, LB 644, § 1; Laws 2007, LB334, § 22.
Operative date July 1, 2007.

ARTICLE 3

DEPARTMENT OF REVENUE

Section.

- 77-361. Department of Revenue; functions and goals.
- 77-366. Tax Commissioner; officers and employees; deputies; bond or insurance; powers.
- 77-370. Department of Revenue; uniform tax books, records, and forms; approval.
- 77-374. Department of Revenue; efficiency recommendations; report; to whom.
- 77-375. Tax Commissioner; administer oaths; compel attendance of witnesses; production of records; rules of procedure for discovery.
- 77-377. Proceedings by Attorney General or county attorney; enforcement of revenue laws.
- 77-3,112. Low-level radioactive waste facility or employment; employment of person removed under immigration and customs enforcement or convicted for certain violations; tax credit or exemption; prohibited.

77-361 Department of Revenue; functions and goals. The functions and goals of the Department of Revenue shall be to: (1) Execute faithfully the revenue and property tax laws of the State of Nebraska; (2) provide for efficient, updated, and economical methods and systems of revenue accounting, reporting, enforcement, and related activities; and (3) continually seek to improve its system of administration to provide greater efficiency and convenience to this state's taxpayers.

Source: Laws 1980, LB 834, § 2; Laws 2007, LB334, § 23.
Operative date July 1, 2007.

77-366 Tax Commissioner; officers and employees; deputies; bond or insurance; powers. (1) The Tax Commissioner shall appoint or employ deputies, investigators, inspectors, agents, security personnel, and other persons as he or she deems necessary to administer and effectively enforce all provisions of the revenue and property tax laws of this state. The appointed personnel shall hold office at the pleasure of the Tax Commissioner. Any appointed or employed personnel shall perform the duties assigned by the Tax Commissioner.

(2) All personnel appointed or employed by the Tax Commissioner shall be bonded or insured as required by section 11-201. As specified by the Tax Commissioner, certain personnel 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 pursuant to the limitations in section 9-1,101. Such personnel shall be empowered to arrest with or without a warrant, file and serve any lien, seize property, serve and return a summons, warrant, or subpoena issued by the Tax Commissioner, collect taxes, and bring an offender before any court with jurisdiction in this state, except that such personnel shall not be authorized to carry weapons or enforce any laws other than laws administered by the Tax Commissioner or the Department of Revenue and sections 28-1101 to 28-1117 relating to possession of a gambling device pursuant to the limitations in section 9-1,101.

(3) Subsection (2) of this section shall not be construed to restrict any other law enforcement officer of this state from enforcing any state law, revenue or otherwise.

Source: Laws 1980, LB 834, § 7; Laws 1990, LB 821, § 42; Laws 1993, LB 345, § 5; Laws 1995, LB 490, § 38; Laws 1999, LB 36, § 6; Laws 2004, LB 884, § 36; Laws 2007, LB334, § 24; Laws 2007, LB638, § 19.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 334, section 24, with LB 638, section 19, to reflect all amendments.

Note: The changes made by LB 334 became operative July 1, 2007. The changes made by LB 638 became effective September 1, 2007.

77-370 Department of Revenue; uniform tax books, records, and forms; approval. The form of all schedules, books of instruction, records, and all other forms which may be necessary or expedient for the proper administration of the revenue and property tax laws of the state shall be approved by the Department of Revenue. All such schedules, forms, and documents shall be uniform throughout the several counties insofar as the same is possible and practicable.

Source: Laws 1921, c. 133, art. III, § 3, p. 548; C.S.1922, § 5829; C.S.1929, § 77-303; R.S.1943, § 77-304; Laws 1959, c. 355, § 2, p. 1251; Laws 1969, c. 647, § 1, p. 2565; R.S.1943, (1976), § 77-304; Laws 1980, LB 834, § 11; Laws 1997, LB 270, § 18; Laws 1999, LB 36, § 8; Laws 2007, LB334, § 25.
Operative date July 1, 2007.

77-374 Department of Revenue; efficiency recommendations; report; to whom. Where the Department of Revenue shall find that the administration of the revenue and property tax laws of the state might be more efficiently and economically conducted, it shall cause to be prepared recommendations to effect the desired objective. Such recommendations shall be given to the Governor and the chairperson of the appropriate legislative committee when the Legislature is next in regular session following the development of the recommendations. Should the Legislature be in regular session at the time such recommendations are compiled, the recommendations shall be communicated to the Governor and the appropriate committee of the Legislature.

Source: Laws 1965, c. 459, § 13, p. 1459; R.S.1943, (1976), § 77-332; Laws 1980, LB 834, § 15; Laws 2007, LB334, § 26.
Operative date July 1, 2007.

77-375 Tax Commissioner; administer oaths; compel attendance of witnesses; production of records; rules of procedure for discovery. (1) The Tax Commissioner or his or her duly authorized representative may administer oaths and compel the attendance of witnesses and require the production of records as may be necessary for the performance of his or her responsibilities under applicable state law.

(2) Any person shall comply with a written demand of the Tax Commissioner requiring the production of records notwithstanding the confidentiality provisions of section 8-1401. The records and the information contained thereon shall be protected pursuant to the confidentiality provisions applicable to the Tax Commissioner. Any person disclosing information to the Tax Commissioner pursuant to a demand for production of records under this subsection is immune from liability, civil, criminal, or otherwise, that might result from disclosing such information. The Tax Commissioner shall pay the costs of providing such information pursuant to section 8-1402.

(3) The Tax Commissioner may adopt and promulgate rules of procedure for discovery, not in conflict with the laws governing discovery in civil cases, as may be necessary for the performance of his or her responsibilities under applicable state law.

(4) The Tax Commissioner shall have access to the information required to be reported under the New Hire Reporting Act for the purpose of administering taxes he or she has a duty to collect.

Source: Laws 1965, c. 459, § 9, p. 1457; R.S.1943, (1976), § 77-328; Laws 1980, LB 834, § 16; Laws 1993, LB 345, § 6; Laws 1995, LB 490, § 42; Laws 1998, LB 1104, § 8; Laws 1999, LB 36, § 9; Laws 2007, LB223, § 1.
Operative date January 1, 2008.

Cross Reference

New Hire Reporting Act, see section 48-2301.

77-377 Proceedings by Attorney General or county attorney; enforcement of revenue laws. The Department of Revenue may request the Attorney General or any county attorney to institute proceedings, actions, and prosecutions as may be required to enforce the laws relating to penalties, liabilities, assessments, collection, and payment of revenue and

punishment of public officers, persons, or officers or agents of corporations for failure to comply with or for neglect to comply with the provisions of any revenue or property tax law administered by or subject to the administrative jurisdiction of the department.

Source: Laws 1965, c. 459, § 8, p. 1457; R.S.1943, (1976), § 77-327; Laws 1980, LB 834, § 18; Laws 1993, LB 345, § 7; Laws 2007, LB334, § 27.
Operative date July 1, 2007.

77-3,112 Low-level radioactive waste facility or employment; employment of person removed under immigration and customs enforcement or convicted for certain violations; tax credit or exemption; prohibited. (1) Notwithstanding any provision of law, the Tax Commissioner shall not approve or grant to any person or taxpayer any tax credit or exemption for the construction of a facility or the employment of people for the disposal in Nebraska of low-level radioactive waste for which a license is required pursuant to the Low-Level Radioactive Waste Disposal Act.

(2) Notwithstanding any provision of law, the Tax Commissioner shall not approve or grant to any person any tax credit, exemption, or refund for the employment of any person who has been removed from the United States pursuant to proceedings initiated by the United States Immigration and Customs Enforcement, or other competent authority, or who has been convicted in a criminal court proceeding for offenses related to illegal immigration. Any benefits that were received prior to the removal or conviction will be recaptured to the extent the benefits were received based on the employment of such persons.

Source: Laws 1987, LB 523, § 46; Laws 2007, LB223, § 2.
Operative date September 1, 2007.

Cross Reference

Low-Level Radioactive Waste Disposal Act, see section 81-1578.

ARTICLE 4

TRAINING AND CERTIFICATION OF COUNTY ASSESSORS

Section.

77-414. Educational courses and standards; Tax Commissioner; duties.

77-415. Repealed. Laws 2007, LB 334, § 108.

77-417. Repealed. Laws 2007, LB 334, § 108.

77-421. Certification as county assessor; applicants; forms; examination; fee.

77-422. Certification as county assessor; examination; successful completion; certificate; disciplinary actions; appeal; invalidated certificate; effect.

77-414 Educational courses and standards; Tax Commissioner; duties. The Property Tax Administrator shall:

(1) Establish, implement, and maintain a required system of educational courses for the certification and recertification of all holders of county assessor certificates; and

(2) Establish the required educational standards and criteria for certification and recertification of all holders of county assessor certificates.

In order to promote compliance with the requirements of this section, the Tax Commissioner shall adopt and promulgate, and from time to time amend or revise, rules and regulations containing the necessary educational standards and criteria for certification and recertification.

Source: Laws 1999, LB 194, § 14; Laws 2003, LB 443, § 1; Laws 2007, LB334, § 28.
Operative date July 1, 2007.

77-415 Repealed. Laws 2007, LB 334, § 108.

77-417 Repealed. Laws 2007, LB 334, § 108.

77-421 Certification as county assessor; applicants; forms; examination; fee. The Property Tax Administrator shall, in February, May, August, and November of each year, hold an examination of applicants for certification as county assessor. An applicant for the examination shall, not less than ten days before an examination, present to the Property Tax Administrator a written application on forms provided by the Property Tax Administrator. Such application shall not be considered by the Property Tax Administrator unless accompanied by a payment of a fee to the order of the Tax Commissioner. The fees shall be credited to the Department of Revenue Property Assessment Division Cash Fund. The amount of such fee shall be determined annually by the Tax Commissioner and shall be sufficient to cover the costs of the administration of the examination. Such examination shall be written and shall be of such character as fairly to test and determine the qualifications, fitness, and ability of the person tested actually to perform the duties of county assessor. The Property Tax Administrator shall prepare such examination.

Source: Laws 1969, c. 623, § 1, p. 2520; Laws 1983, LB 245, § 1; Laws 1986, LB 1105, § 1; Laws 1995, LB 490, § 52; Laws 1997, LB 270, § 22; Laws 1999, LB 36, § 12; Laws 2000, LB 968, § 34; Laws 2007, LB334, § 29.
Operative date July 1, 2007.

77-422 Certification as county assessor; examination; successful completion; certificate; disciplinary actions; appeal; invalidated certificate; effect. (1) Upon the successful completion of the examination by the applicant, a county assessor certificate shall be issued to him or her.

(2) The Tax Commissioner shall establish a system for revocation or suspension of a certificate, including a certificate issued by the Property Tax Administrator, for failure to maintain the educational standards and criteria and shall have the power to revoke the certificate if the certificate holder has not successfully met the educational requirements in section 77-414. A copy of the Tax Commissioner's written order revoking or suspending a certificate shall be mailed to the person within seven days after the date of the order.

(3) Any person whose certificate, including a certificate issued by the Property Tax Administrator, has been revoked or suspended may appeal the written order of the Tax

Commissioner, within thirty days after the date of the order, to the Tax Equalization and Review Commission in accordance with section 77-5013.

(4) A person whose certificate has been invalidated by the commission or the Tax Commissioner shall not be eligible to hold a certificate for five years after the date of invalidation.

Source: Laws 1969, c. 623, § 2, p. 2521; Laws 2003, LB 443, § 5; Laws 2004, LB 973, § 9; Laws 2006, LB 808, § 25; Laws 2007, LB334, § 30.
Operative date July 1, 2007.

ARTICLE 6

ASSESSMENT AND EQUALIZATION OF RAILROAD PROPERTY

(a) RAILROAD OPERATING PROPERTY

Section.

- 77-603. Railroad property; annual statement; contents.
- 77-603.01. Railroad operating property; sale; report by purchaser; contents; penalty; waiver.
- 77-605. Railroad operating property; failure of railroad to furnish statement or information; penalty; waiver.
- 77-607. Railroad property; Tax Commissioner; hearing; power to compel attendance of railroad's officers or agents.
- 77-612. Railroad property; notice of valuation; appeal.

(b) CAR LINES COMPANIES

- 77-683. Failure to furnish statement; penalty; waiver; Tax Commissioner; harmonize statements.
- 77-684. Tax rate; determination; collection; appeal; distribution.
- 77-685. Distress warrant; receipt issued.
- 77-687. Delinquency in payment of taxes; interest; collection by Tax Commissioner.
- 77-689. Taxes; delinquent; lien; collection.
- 77-690. Taxation; levy; money and credits; surrender to Tax Commissioner.
- 77-691. Money; disposition.

(a) RAILROAD OPERATING PROPERTY

77-603 Railroad property; annual statement; contents. On or before April 15 each year, the person, company, or corporation owning, operating, or controlling any railroad or railroad service in this state shall, by a duly authorized corporate representative or official, return to the Property Tax Administrator a statement of the property of such company on January 1 preceding. The statement shall be made on forms prescribed by the Tax Commissioner. All information reported by the railroad company, not available from any other public source, and any memorandum thereof shall be confidential and available to taxing officials only. For good cause shown, the Property Tax Administrator may allow an extension

of time in which to file such statement. Such extension shall not exceed fifteen days after April 15. Such statement shall include:

(1) A list of the right-of-way, track, and roadbed, giving the entire length of the main track and sidetrack in this and other states, and showing as to this state the portion in each governmental subdivision;

(2) A schedule showing: (a) The amount of capital stock authorized and the number of shares into which such capital stock is divided; (b) the amount of capital stock paid up; (c) the market value of the stock or, if of no market value, then the true value of the shares of stock; (d) the total amount of all secured and unsecured indebtedness except for current expenses of operating the road; and (e) the taxable valuation of all its operating property in this state that is locally assessed;

(3) A correct return of the value of all materials and supplies used for operating and carrying on the business of such railroad;

(4) The total gross earnings and net earnings of such corporation during the year for which the statement is made, and the total amount expended in the operation and maintenance of the property and the improvements to such property, distinguishing that expended in improvement or betterment from that expended in maintenance and operation, also the dividend last declared upon its shares and the amount thereof, and the date, number, and amount of all dividends declared upon its stock during the year preceding the date of such report; and

(5) Such other necessary information as the Property Tax Administrator may require, all of which shall be taken into consideration in ascertaining and fixing the value of such railroad and the franchise thereof.

Source: Laws 1903, c. 73, § 87, p. 414; R.S.1913, § 6377; Laws 1921, c. 133, art. VI, § 3, p. 555; C.S.1922, § 5841; C.S.1929, § 77-503; R.S.1943, § 77-603; Laws 1979, LB 105, § 3; Laws 1979, LB 103, § 2; Laws 1981, LB 179, § 4; Laws 1985, LB 268, § 5; Laws 1992, LB 719A, § 163; Laws 1995, LB 490, § 62; Laws 1997, LB 270, § 25; Laws 2004, LB 973, § 10; Laws 2007, LB334, § 31.
Operative date July 1, 2007.

77-603.01 Railroad operating property; sale; report by purchaser; contents; penalty; waiver. The sale of railroad operating property as defined in section 77-602 shall be reported by the purchaser to the Property Tax Administrator within thirty days after the date of sale. The purchaser shall identify the seller, the date of the sale, any change in the name of the railroad, the main track and sidetrack mileage located in each political subdivision, and the purchase price. If additional information regarding the sale is deemed necessary, the Property Tax Administrator shall make a written request for such information to the purchaser or seller. This requirement shall apply only to a purchaser subject to section 77-603. For each day's failure to furnish the information required to be reported by this section, the Tax Commissioner shall assess a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner may waive all or part of the penalty provided in this section.

Source: Laws 1997, LB 270, § 26; Laws 1999, LB 36, § 13; Laws 2007, LB334, § 32.
Operative date July 1, 2007.

77-605 Railroad operating property; failure of railroad to furnish statement or information; penalty; waiver. For each day's failure to furnish the statement required by section 77-603 or for each day's failure to furnish the information as required on those statements, the Tax Commissioner shall assess a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner, in his or her discretion, may waive all or part of the penalty provided in this section.

Source: Laws 1903, c. 73, § 88, p. 416; R.S.1913, § 6379; Laws 1921, c. 133, art. VI, § 5, p. 557; C.S.1922, § 5843; C.S.1929, § 77-505; R.S.1943, § 77-605; Laws 1977, LB 39, § 212; Laws 1979, LB 105, § 4; Laws 1979, LB 187, § 195; Laws 1980, LB 599, § 11; Laws 1985, LB 268, § 7; Laws 1986, LB 817, § 4; Laws 1995, LB 490, § 64; Laws 1997, LB 270, § 27; Laws 1999, LB 36, § 14; Laws 2007, LB334, § 33.
Operative date July 1, 2007.

77-607 Railroad property; Tax Commissioner; hearing; power to compel attendance of railroad's officers or agents. The Tax Commissioner shall have power to require any officer, agent, or servant of any railroad or railway company having any portion of its property in this state to attend a hearing and to answer under oath questions regarding the property. The Tax Commissioner shall have power to issue whatever notice or process may be necessary to compel the attendance of any such person as a witness.

Source: Laws 1903, c. 73, § 91, p. 417; R.S.1913, § 6381; Laws 1921, c. 133, art. VI, § 7, p. 558; C.S.1922, § 5845; C.S.1929, § 77-507; R.S.1943, § 77-607; Laws 1977, LB 39, § 213; Laws 1985, LB 268, § 9; Laws 1995, LB 490, § 66; Laws 1997, LB 270, § 29; Laws 2007, LB334, § 34.
Operative date July 1, 2007.

77-612 Railroad property; notice of valuation; appeal. On or before July 1, the Property Tax Administrator shall mail a draft appraisal to each railroad company required to file pursuant to section 77-603. The Property Tax Administrator shall, on or before July 15 of each year, notify by certified mail each railroad company of the total allocated value of its operating property. If a railroad company feels aggrieved, such railroad company may, on or before August 1, file with the Tax Commissioner an administrative appeal in writing stating that it claims the valuation is unjust or inequitable, the amount which it is claimed the valuation should be, and the excess therein and asking for an adjustment of the valuation by the Tax Commissioner. The Tax Commissioner shall act upon the appeal and shall issue a written order mailed to the company within seven days after the date of the order. The order may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013.

Source: Laws 1927, c. 174, § 1, p. 510; C.S.1929, § 77-509; R.S.1943, § 77-612; Laws 1985, LB 268, § 13; Laws 1988, LB 352, § 153; Laws 1995, LB 490, § 70; Laws 1997, LB 270, § 30; Laws 2004, LB 973, § 11; Laws 2007, LB334, § 35.
Operative date July 1, 2007.

(b) CAR LINES COMPANIES

77-683 Failure to furnish statement; penalty; waiver; Tax Commissioner; harmonize statements. (1) For each day's failure to furnish the statement required by section 77-680 or 77-681 or for each day's failure to furnish the information as required on the statement, the company may be assessed a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner may waive all or part of the penalty provided in this section.

(2) In determining the number of such cars, the Property Tax Administrator, insofar as may be practicable, shall harmonize the statements of the railroad companies and car line companies. Such assessment shall be included in the records of the Property Tax Administrator.

Source: Laws 1992, LB 1063, § 68; Laws 1992, LB 719A, § 209; Laws 1995, LB 490, § 78; Laws 1997, LB 270, § 34; Laws 1999, LB 36, § 15; Laws 2007, LB334, § 36.
Operative date July 1, 2007.

77-684 Tax rate; determination; collection; appeal; distribution. The Property Tax Administrator shall, on or before January 15 each year, establish a tax rate for purposes of taxation against the taxable value as provided in sections 77-682 and 77-683 at a rate which shall be equal to the total property taxes levied in the state divided by the total taxable value of all taxable property in the state as certified pursuant to section 77-1613.01. The date when such tax rate is determined shall be deemed to be the levy date for the property. The Property Tax Administrator shall send to each car line company a statement showing the taxable value, the tax rate, and the amount of the tax and a statement that such tax is due and payable to the Property Tax Administrator on January 31 next following the levy thereof. If a car line company feels aggrieved, such company may, on or before February 15, file an appeal with the Tax Commissioner. The Tax Commissioner shall act upon the appeal and shall issue a written order mailed to the company within seven days after the date of the order. The order may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013. The Property Tax Administrator shall remit the tax collected, less a three-percent collection fee, to the State Treasurer for distribution among the taxing subdivisions in proportion to all railroad taxes levied by taxing subdivisions. The collection fee shall be remitted to the State Treasurer for credit to the Department of Revenue Property Assessment Division Cash Fund.

Source: Laws 1992, LB 1063, § 69; Laws 1992, LB 719A, § 210; Laws 1993, LB 345, § 11; Laws 1995, LB 490, § 79; Laws 1997, LB 270, § 35; Laws 1999, LB 36, § 16; Laws 2000, LB 968, § 37; Laws 2004, LB 973, § 12; Laws 2007, LB334, § 37.
Operative date July 1, 2007.

77-685 Distress warrant; receipt issued. The Tax Commissioner may issue a distress warrant to compel payment of the tax required by section 77-684 which may be served by any sheriff, any member of the Nebraska State Patrol, or any person specially deputized by the Tax Commissioner to serve such warrant. At the time the tax is paid, the Tax Commissioner shall issue a receipt in duplicate, one of which shall be given to the taxpayer and one filed with the State Treasurer at the time the tax collected is remitted by the Tax Commissioner to the state treasury.

Source: Laws 1992, LB 1063, § 70; Laws 1992, Second Spec. Sess., LB 1, § 63; Laws 1995, LB 490, § 80; Laws 2007, LB334, § 38.
Operative date July 1, 2007.

77-687 Delinquency in payment of taxes; interest; collection by Tax Commissioner. One-half of the taxes levied as provided in section 77-684 shall become delinquent March 1, and the second half on July 1, next following the date the tax has become due and payable. All delinquent taxes shall bear 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 they become delinquent, and the interest shall be collected in the same manner as the tax on which the interest accrues. If such taxes and interest due thereon have not been paid on July 1 following the levy thereof, the Tax Commissioner shall collect the tax and interest by distress and sale of any property belonging to such delinquent car line company in the same manner as is required of county treasurers and county sheriffs in like cases.

Source: Laws 1992, LB 1063, § 72; Laws 1992, LB 719A, § 212; Laws 1995, LB 490, § 82; Laws 1997, LB 270, § 36; Laws 2007, LB334, § 39.
Operative date July 1, 2007.

77-689 Taxes; delinquent; lien; collection. If any taxes and interest and penalties due on such taxes have not been paid on July 1 following the levy thereof, the total amount shall be a lien in favor of the State of Nebraska upon all money and credits belonging to the car line companies until the liability therefor is satisfied or otherwise released or discharged. The Tax Commissioner or his or her designated agent may collect such total amount by issuing a distress warrant and making levy upon all money and credits belonging to such car line companies. Such lien shall be filed and enforced pursuant to the Uniform State Tax Lien Registration and Enforcement Act.

Source: Laws 1992, LB 1063, § 74; Laws 1992, LB 719A, § 214; Laws 1995, LB 490, § 83; Laws 2007, LB334, § 40.
Operative date July 1, 2007.

Cross Reference

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-690 Taxation; levy; money and credits; surrender to Tax Commissioner. Any car line company in possession of any money and credits upon which levy has been made shall, upon demand of the Tax Commissioner or his or her designated agent, surrender the same to the Tax Commissioner or his or her designated agent. If any such car line company fails or refuses to surrender the money and credits in accordance with the requirements of this section, such car line company shall be liable to the State of Nebraska in a sum equal to the value of the money and credits not so surrendered but not exceeding the amount of the taxes, interest, and penalties for the collection of which such levy has been made.

Source: Laws 1992, LB 1063, § 75; Laws 1992, LB 719A, § 215; Laws 1995, LB 490, § 84; Laws 2007, LB334, § 41.
Operative date July 1, 2007.

77-691 Money; disposition. The money realized from any levy made pursuant to section 77-689 shall be first applied by the Tax Commissioner toward payment of any costs incurred by virtue of such levy and next to the payment of such taxes, interest, and penalties. Any balance remaining shall then be paid over to the car line company entitled thereto.

Source: Laws 1992, LB 1063, § 76; Laws 1992, LB 719A, § 216; Laws 1995, LB 490, § 85; Laws 2007, LB334, § 42.
Operative date July 1, 2007.

ARTICLE 7

DEPARTMENT OF PROPERTY ASSESSMENT AND TAXATION

Section.

- 77-701. Property assessment division; established; Property Tax Administrator; powers and duties; pending litigation; how treated.
- 77-702. Property Tax Administrator; qualifications; duties.
- 77-703. Repealed. Laws 2007, LB 334, § 108.
- 77-704. Repealed. Laws 2007, LB 334, § 108.
- 77-705. Uniform tax books, records, and forms; approval.
- 77-706. Property tax administration; implementation of agreements and working relationships; state and federal agencies.
- 77-708. Repealed. Laws 2007, LB 334, § 108.
- 77-709. Property assessment division; annual report; powers and duties.

77-701 Property assessment division; established; Property Tax Administrator; powers and duties; pending litigation; how treated. (1) A division of state government to be known as the property assessment division of the Department of Revenue is established. The Property Tax Administrator shall be the chief administrative officer of the division but shall be under the general supervision of the Tax Commissioner.

(2) The goals and functions of the division shall be to: (a) Execute faithfully the property tax laws of the State of Nebraska; (b) provide for efficient, updated methods and systems of

property tax reporting, enforcement, and related activities; and (c) continually seek to improve its system of administration.

(3) All employees, budget requirements, appropriations, encumbrances, and assets and liabilities of the Department of Property Assessment and Taxation for the administration of property valuation and equalization shall be transferred and delivered to the division. The transferred employees shall not lose any accrued benefits or status due to the transfer and shall receive the same benefits as other state employees, including participation in the State Employees Retirement Act.

(4) In any litigation pending on July 1, 2007, at 12:01 a.m., in any court in this state, any contested case pending on such date and time under the Administrative Procedure Act, or any appeal pending on such date and time before the Tax Equalization and Review Commission, in which the Property Tax Administrator is a party, the Tax Commissioner shall be substituted for the Property Tax Administrator as the party in such litigation, contested case, or appeal.

Source: Laws 1999, LB 36, § 21; Laws 2007, LB334, § 43.
Operative date July 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.
State Employees Retirement Act, see section 84-1331.

77-702 Property Tax Administrator; qualifications; duties. (1) Commencing with the expiration of the term of the Property Tax Administrator holding office on July 1, 1999, the Governor shall appoint a Property Tax Administrator with the approval of a majority of the members of the Legislature. The Property Tax Administrator shall have experience and training in the fields of taxation and property appraisal and shall meet all the qualifications required for members of the Tax Equalization and Review Commission under subsections (1) and (2) and subdivision (6)(a) of section 77-5004. The Property Tax Administrator shall adopt and promulgate rules and regulations to carry out his or her duties through June 30, 2007. Rules, regulations, and forms of the Property Tax Administrator in effect on July 1, 2007, shall be valid rules, regulations, and forms of the Department of Revenue beginning on July 1, 2007.

(2) In addition to any duties, powers, or responsibilities otherwise conferred upon the Property Tax Administrator, he or she shall administer and enforce all laws related to the state supervision of local property tax administration and the central assessment of property subject to property taxation. The Property Tax Administrator shall also advise county assessors regarding the administration and assessment of taxable property within the state and measure assessment performance in order to determine the accuracy and uniformity of assessments.

Source: Laws 1999, LB 36, § 22; Laws 2001, LB 465, § 1; Laws 2007, LB334, § 44.
Operative date July 1, 2007.

77-703 Repealed. Laws 2007, LB 334, § 108.

77-704 Repealed. Laws 2007, LB 334, § 108.

77-705 Uniform tax books, records, and forms; approval. The form of all schedules, books of instruction, assessment and tax books, records, and other forms which may be necessary or expedient for the proper administration of the property tax laws of the state shall be approved by the Tax Commissioner. All such schedules, forms, and documents shall be uniform throughout the several counties insofar as the same is possible and practicable. The Department of Revenue may provide forms on a reimbursement basis. Alterations to any prescribed form may be made only upon written application to and written approval from the Tax Commissioner.

Source: Laws 1999, LB 36, § 25; Laws 2007, LB334, § 45.
Operative date July 1, 2007.

77-706 Property tax administration; implementation of agreements and working relationships; state and federal agencies. The Department of Revenue may develop and implement such agreements and working relationships which are consistent with the laws of the State of Nebraska with any federal office, state agency, or local subdivision of state government, either within or without the State of Nebraska, which it may find necessary or desirable for proper administration of the property tax laws of this state.

Source: Laws 1999, LB 36, § 26; Laws 2007, LB334, § 46.
Operative date July 1, 2007.

77-708 Repealed. Laws 2007, LB 334, § 108.

77-709 Property assessment division; annual report; powers and duties. The property assessment division of the Department of Revenue shall publish an annual report detailing property tax valuations, taxes levied, and property tax rates throughout the state. The annual report shall display information by political subdivision and by property type within each county and also include statewide summarizations. The department may charge a fee for copies of the annual report. The Tax Commissioner shall set the fee, based on the reasonable cost of production.

Source: Laws 2001, LB 170, § 4; Laws 2007, LB334, § 47.
Operative date July 1, 2007.

ARTICLE 8

PUBLIC SERVICE ENTITIES

Section.

77-801.02. Tax Commissioner; powers.

77-802.02. Public service entity; appeals.

77-803. Public service entity; failure to furnish statement or information; penalty; waiver.

77-804. Sale of entity; report required; penalty; waiver.

77-801.02 Tax Commissioner; powers. The Tax Commissioner shall have power to require any officer, agent, or servant of any public service entity having any portion of its property in this state to attend a hearing and to answer under oath questions regarding the property. The Tax Commissioner shall have power to issue whatever notice or process may be necessary to compel the attendance of any such person as a witness.

Source: Laws 1997, LB 270, § 39; Laws 2007, LB334, § 48.
Operative date July 1, 2007.

77-802.02 Public service entity; appeals. On or before September 10, if a public service entity feels aggrieved, such public service entity may file an appeal with the Tax Commissioner. The Tax Commissioner shall act upon the appeal and shall issue a written order mailed to the entity within seven days after the date of the order. The order may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013.

Source: Laws 1997, LB 270, § 42; Laws 2000, LB 968, § 41; Laws 2004, LB 973, § 15; Laws 2007, LB334, § 49.
Operative date July 1, 2007.

Cross Reference

Tax Equalization and Review Commission Act, see section 77-5001.

77-803 Public service entity; failure to furnish statement or information; penalty; waiver. For each day's failure to furnish the statement required by section 77-801 or for each day's failure to furnish the information as required on those statements, the public service entity may be assessed a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner, in his or her discretion, may waive all or part of the penalty provided in this section.

Source: Laws 1903, c. 73, § 77, p. 411; Laws 1903, c. 73, § 81, p. 412; Laws 1911, c. 104, § 9, p. 375; R.S.1913, §§ 6367, 6371; Laws 1921, c. 133, art. IX, § 3, p. 587; C.S.1922, § 5892; C.S.1929, § 77-803; R.S.1943, § 77-803; Laws 1986, LB 732, § 3; Laws 1986, LB 817, § 6; Laws 1995, LB 490, § 89; Laws 1997, LB 270, § 43; Laws 1999, LB 36, § 17; Laws 2007, LB334, § 50.
Operative date July 1, 2007.

77-804 Sale of entity; report required; penalty; waiver. Any sale of a public service entity as defined in section 77-801.01 shall be reported by the purchaser to the Property Tax Administrator within thirty days from the date of the sale. The purchaser shall identify the seller, the date of the sale, any change in name of the entity, and the purchase price of the entity. If additional information regarding the sale is needed by the Property Tax Administrator, a specific written request shall be made. For each day's failure to furnish the information, an entity may be assessed a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the

Tax Commissioner and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner may waive all or part of the penalty provided in this section.

Source: Laws 1987, LB 508, § 27; Laws 1995, LB 490, § 90; Laws 1997, LB 270, § 44; Laws 1999, LB 36, § 18; Laws 2007, LB334, § 51.
Operative date July 1, 2007.

ARTICLE 9

INSURANCE COMPANIES

Section.

77-908. Insurance companies; tax on gross premiums; rate; exceptions.

77-912. Tax; Director of Insurance; disposition; exceptions.

77-908 Insurance companies; tax on gross premiums; rate; exceptions. Every insurance company organized under the stock, mutual, assessment, or reciprocal plan, except fraternal benefit societies, which is transacting business in this state shall, on or before March 1 of each year, pay a tax to the director of one percent of the gross amount of direct writing premiums received by it during the preceding calendar year for business done in this state, except that (1) for group sickness and accident insurance the rate of such tax shall be five-tenths of one percent, (2) for property and casualty insurance, excluding individual sickness and accident insurance, the rate of such tax shall be one percent, and (3) for capitation payments made in accordance with the Medical Assistance Act, the rate of tax shall be five percent. A captive insurer authorized under the Captive Insurers Act that is transacting business in this state shall, on or before March 1 of each year, pay to the director a tax of one-fourth of one percent of the gross amount of direct writing premiums received by such insurer during the preceding calendar year for business transacted in the state. The taxable premiums shall include premiums paid on the lives of persons residing in this state and premiums paid for risks located in this state whether the insurance was written in this state or not, including that portion of a group premium paid which represents the premium for insurance on Nebraska residents or risks located in Nebraska included within the group when the number of lives in the group exceeds five hundred. The tax shall also apply to premiums received by domestic companies for insurance written on individuals residing outside this state or risks located outside this state if no comparable tax is paid by the direct writing domestic company to any other appropriate taxing authority. Companies whose scheme of operation contemplates the return of a portion of premiums to policyholders, without such policyholders being claimants under the terms of their policies, may deduct such return premiums or dividends from their gross premiums for the purpose of tax calculations. Any such insurance company shall receive a credit on the tax imposed as provided in the Community Development Assistance Act.

Source: Laws 1951, c. 256, § 2, p. 878; Laws 1984, LB 372, § 13; Laws 1986, LB 1114, § 10; Laws 1989, LB 92, § 275; Laws 1992, LB 1063, § 91; Laws 1992, Second Spec. Sess., LB 1, § 64; Laws 2001, LB 433, § 1; Laws 2002, Second Spec. Sess., LB 9, § 3; Laws 2006, LB 1248, § 83; Laws 2007, LB117, § 53; Laws 2007, LB367, § 5.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 117, section 53, with LB 367, section 5, to reflect all amendments.

Note: The changes made by LB 367 became operative for taxable years beginning or deemed to begin on or after January 1, 2007, under the Internal Revenue Code of 1986, as amended. The changes made by LB 117 became effective September 1, 2007.

Cross Reference

Captive Insurers Act, see section 44-8201.

Community Development Assistance Act, see section 13-201.

Medical Assistance Act, see section 68-901.

77-912 Tax; Director of Insurance; disposition; exceptions. The Director of Insurance shall transmit fifty percent of the taxes paid in conformity with Chapter 44, article 1, and Chapter 77, article 9, to the State Treasurer, forty percent of such taxes paid to the General Fund, and ten percent of such taxes paid to the Mutual Finance Assistance Fund promptly upon completion of his or her audit and examination and in no event later than May 1 of each year, except that:

(1) All fire insurance taxes paid pursuant to sections 44-150 and 81-523 shall be remitted to the State Treasurer for credit to the General Fund;

(2) All workers' compensation insurance taxes paid pursuant to section 44-150 shall be remitted to the State Treasurer for credit to the Compensation Court Cash Fund;

(3) Commencing with the premium and related retaliatory taxes for the taxable year ending December 31, 2001, and for each taxable year thereafter, all premium and related retaliatory taxes imposed by section 44-150 or 77-908 paid by insurers writing health insurance in this state shall be remitted to the Comprehensive Health Insurance Pool Distributive Fund; and

(4) All taxes paid pursuant to section 77-908 for capitation payments made in accordance with the Medical Assistance Act shall be remitted to the Health and Human Services Cash Fund.

Source: Laws 1951, c. 256, § 6, p. 880; Laws 1986, LB 1114, § 13; Laws 1987, LB 302, § 8; Laws 1993, LB 757, § 35; Laws 1996, LB 693, § 8; Laws 1998, LB 1120, § 27; Laws 1999, LB 113, § 3; Laws 2000, LB 1253, § 44; Laws 2002, Second Spec. Sess., LB 9, § 4; Laws 2003, LB 408, § 3; Laws 2006, LB 1248, § 84; Laws 2007, LB296, § 702.
Operative date July 1, 2007.

Cross Reference

Medical Assistance Act, see section 68-901.

ARTICLE 12

PERSONAL PROPERTY, WHERE AND HOW LISTED

Section.

- 77-1216. Repealed. Laws 2007, LB 166, § 13.
- 77-1229. Tangible personal property; form of return; time of filing; exemption; procedure.
- 77-1233.04. Tangible personal property tax returns; change in value; omitted property; procedure; penalty; county assessor; duties.
- 77-1233.06. Tangible personal property tax valuation or penalty; protests; procedure.
- 77-1247. Taxation of air carriers; annual report; contents; failure to furnish report or information; penalty; waiver.
- 77-1249. Taxation of air carriers; tax rate; appeal.
- 77-1249.01. Taxation of air carriers; delinquency; interest; collection.
- 77-1250. Taxation of air carriers; when due; lien; distribution to counties; collection fee.
- 77-1250.02. Aircraft; owner, lessee, manager of hangar or land, report required; violation; penalty.
- 77-1250.03. Taxation of air carriers; taxes; delinquent; lien; collection.
- 77-1250.04. Taxation of air carriers; money and credits; surrender to Tax Commissioner.
- 77-1250.05. Taxation of air carriers; disposition of funds collected.

77-1216 Repealed. Laws 2007, LB 166, § 13.

77-1229 Tangible personal property; form of return; time of filing; exemption; procedure. (1) Every person required by section 77-1201 to list and value taxable tangible personal property shall list such property upon the forms prescribed by the Tax Commissioner. The forms shall be available from the county assessor and when completed shall be signed by each person or his or her agent and be filed with the county assessor. The forms shall be filed on or before May 1 of each year.

(2) Any person seeking a personal property exemption pursuant to subsection (2) of section 77-4105 or the Nebraska Advantage Act shall annually file a copy of the forms required pursuant to section 77-4105 or the act with the county assessor in each county in which the person is requesting exemption. The copy shall be filed on or before May 1. Failure to timely file the required forms shall cause the forfeiture of the exemption for the tax year. If a taxpayer pursuant to this subsection also has taxable tangible personal property, such property shall be listed and valued as required under subsection (1) of this section.

Source: Laws 1903, c. 73, § 49, p. 399; Laws 1909, c. 111, § 1, p. 437; R.S.1913, § 6336; C.S.1922, § 5938; C.S.1929, § 77-1425; R.S.1943, § 77-1229; Laws 1947, c. 250, § 16, p. 793; Laws 1947, c. 251, § 26, p. 819; Laws 1959, c. 355, § 16, p. 1260; Laws 1959, c. 365, § 8, p. 1289; Laws 1959, c. 367, § 1, p. 1296; Laws 1969, c. 665, § 1, p. 2587; Laws 1987, LB 508, § 35; Laws 1992, LB 1063, § 98; Laws 1992, Second Spec. Sess., LB 1, § 71; Laws 1995, LB 490, § 92; Laws 1997, LB 270, § 50; Laws 2000, LB 968, § 43; Laws 2005, LB 312, § 5; Laws 2007, LB334, § 52.
Operative date July 1, 2007.

Cross Reference

Nebraska Advantage Act, see section 77-5701.

77-1233.04 Tangible personal property tax returns; change in value; omitted property; procedure; penalty; county assessor; duties. (1) The county assessor shall list and value at net book value any item of tangible personal property omitted from a personal property return of any taxpayer. The county assessor shall change the reported valuation of any item of tangible personal property listed on the return to conform the valuation to net book value. If a taxpayer fails or refuses to file a personal property return, the assessor shall, on behalf of the taxpayer, file a personal property return which shall list and value all of the taxpayer's taxable personal property at net book value. The county assessor shall list or change the valuation of any item of tangible personal property for the current taxing period and the three previous taxing periods or any taxing period included therein.

(2) The tangible personal property so listed and valued shall be taxed at the same rate as would have been imposed upon the property in the tax district in which the property should have been returned for taxation.

(3) Any valuation added to a personal property return or added through the filing of a personal property return, after May 1 and on or before July 31 of the year the property is required to be reported, shall be subject to a penalty of ten percent of the tax due on the value added.

(4) Any valuation added to a personal property return or added through the filing of a personal property return, on or after August 1 of the year the property is required to be reported, shall be subject to a penalty of twenty-five percent of the tax due on the value added.

(5) Interest shall be assessed upon both the tax and the penalty 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 would have been delinquent until paid.

(6) Whenever valuation changes are made to a personal property return or a personal property return is filed pursuant to this section, the county assessor shall correct the assessment roll and tax list, if necessary, to reflect such changes. Such corrections shall be made for the current taxing period and the three previous taxing periods or any taxing period included therein. If the change results in a decreased taxable valuation on the personal property return and the personal property tax has been paid prior to a correction pursuant to this section, the taxpayer may request a refund or credit of the tax in the same manner prescribed in section 77-1734.01, except that such request shall be made within three years after the date the tax was due.

Source: Laws 1947, c. 250, § 42, p. 805; Laws 1965, c. 474, § 1, p. 1526; Laws 1965, c. 475, § 2, p. 1530; Laws 1967, c. 499, § 1, p. 1692; Laws 1980, LB 834, § 59; Laws 1981, LB 167, § 39; Laws 1984, LB 835, § 4; Laws 1987, LB 508, § 11; R.S.Supp., 1988, § 77-412; Laws 1990, LB 821, § 47; Laws 1992, LB 1063, § 102; Laws 1992, Second Spec. Sess., LB 1, § 75; Laws 1995, LB 490, § 93; Laws 1997, LB 270, § 53; Laws 1999, LB 194, § 12; Laws 2000, LB 968, § 44; Laws 2007, LB 166, § 5. Effective date March 8, 2007.

77-1233.06 Tangible personal property tax valuation or penalty; protests; procedure. For purposes of section 77-1233.04:

(1) The county assessor shall notify the taxpayer, on a form prescribed by the Tax Commissioner, of the action taken, the penalty, and the rate of interest. The notice shall also state the taxpayer's appeal rights and the appeal procedures. Such notice shall be given by first-class mail addressed to such taxpayer's last-known address. The entire penalty and interest shall be waived if the omission or failure to report any item of tangible personal property was for the reason that the property was timely reported in the wrong tax district;

(2) The taxpayer may appeal the action of the county assessor, either as to the valuation or the penalties imposed, to the county board of equalization within thirty days after the date of notice. The taxpayer shall preserve his or her appeal by filing a written appeal with the county clerk in the same manner as prescribed for protests in section 77-1502. The action of the county assessor shall become final unless a written appeal is filed within the time prescribed;

(3) The action of the county board of equalization, in an appeal of the penalties imposed, shall be limited to correcting penalties which were wrongly imposed or incorrectly calculated. The county board of equalization shall have no authority to waive or reduce any penalty which was correctly imposed and calculated. The entire penalty and interest on the penalty shall be waived if the omission or failure to report any item of tangible personal property was for the reason that the property was timely reported in the wrong tax district;

(4) Upon ten days' notice to the taxpayer, the county board of equalization shall set a date for hearing the appeal of the taxpayer. The county board of equalization shall make its determination on the appeal within thirty days after the date of hearing. The county clerk shall, within seven days after the determination of the county board, send notice to the taxpayer and the county assessor, on forms prescribed by the Tax Commissioner, of the action of the county board. Appeal may be taken within thirty days after the decision of the county board of equalization to the Tax Equalization and Review Commission; and

(5) Taxes and penalties assessed for the current year, if not delinquent, shall be certified to the county treasurer and collected as if the property had been properly reported for taxation, except that separate tax statements may be mailed. Taxes and penalties assessed for the current year, if delinquent, and taxes and penalties assessed for prior years shall be certified to the county treasurer, and the taxes, penalties, and interest thereon shall be due and collectible immediately upon certification. Collection procedures shall be started immediately regardless of the provisions of any other statute to the contrary.

Source: Laws 1997, LB 270, § 55; Laws 1999, LB 194, § 13; Laws 2007, LB334, § 53.
Operative date July 1, 2007.

77-1247 Taxation of air carriers; annual report; contents; failure to furnish report or information; penalty; waiver. (1) Each air carrier, as defined in section 77-1244, shall on or before June 1 in each year make to the Property Tax Administrator a report, in such form as may be prescribed by the Tax Commissioner, containing the information necessary to determine the value of its flight equipment and the proportion allocated to this state for purposes of taxation as provided in section 77-1246. For good cause shown, the Property Tax Administrator may allow an extension of time in which to file such report. Such extension shall not exceed thirty days after June 1.

(2) For each day's failure to furnish the report required by subsection (1) of this section or for each day's failure to furnish the information as required on the report, the air carrier may be assessed a penalty in the amount of one hundred dollars, except that the penalty shall not exceed ten thousand dollars. Such penalty shall be collected by the Tax Commissioner and credited to the Department of Revenue Property Assessment Division Cash Fund. The Tax Commissioner, in his or her discretion, may waive all or part of the penalty provided in this section.

Source: Laws 1949, c. 231, § 1, p. 641; Laws 1965, c. 478, § 11, p. 1544; Laws 1986, LB 817, § 8; Laws 1995, LB 490, § 100; Laws 1997, LB 270, § 59; Laws 1999, LB 36, § 19; Laws 2007, LB334, § 54. Operative date July 1, 2007.

77-1249 Taxation of air carriers; tax rate; appeal. The Property Tax Administrator shall, on or before January 15 each year, establish a tax rate for purposes of taxation against the taxable value as provided in section 77-1248 at a rate which shall be equal to the total property taxes levied in the state divided by the total taxable value of all taxable property in the state as certified pursuant to section 77-1613.01. The date when such tax rate is determined shall be deemed to be the levy date for the property. The Property Tax Administrator shall send to each air carrier a statement showing the taxable value, the tax rate, and the amount of the tax and a statement that the tax is due and payable to the Property Tax Administrator on January 31 next following the levy thereof. If an air carrier feels aggrieved, such carrier may, on or before February 15, file an appeal with the Tax Commissioner. The Tax Commissioner shall act upon the appeal and shall issue a written order mailed to the carrier within seven days after the date of the order. The order may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013.

Source: Laws 1949, c. 231, § 3, p. 641; Laws 1965, c. 478, § 12, p. 1544; Laws 1969, c. 669, § 2, p. 2591; Laws 1983, LB 193, § 9; Laws 1992, LB 1063, § 110; Laws 1992, Second Spec. Sess., LB 1, § 83; Laws 1995, LB 490, § 102; Laws 1997, LB 270, § 60; Laws 2000, LB 968, § 45; Laws 2004, LB 973, § 17; Laws 2007, LB334, § 55. Operative date July 1, 2007.

Cross Reference

Tax Equalization and Review Commission Act, see section 77-5001.

77-1249.01 Taxation of air carriers; delinquency; interest; collection. One-half of the taxes levied and due under sections 77-1249 and 77-1250 shall become delinquent March 1, and the second half on July 1, next following the date the tax has become due.

All delinquent taxes shall draw interest from the date they become delinquent at a rate equal to the maximum rate of interest allowed per annum under section 45-104.01, as such rate may from time to time be adjusted by the Legislature, and the interest shall be collected and distributed the same as the tax on which the interest accrues. If such taxes and interest due thereon shall not have been paid on July 1 following the levy thereof, the Tax Commissioner shall collect the same by distress and sale of any property belonging to such delinquent person in like manner as required of county treasurers and county sheriffs in like cases.

Source: Laws 1983, LB 193, § 11; Laws 1989, Spec. Sess., LB 7, § 4; Laws 1995, LB 490, § 103; Laws 1997, LB 270, § 61; Laws 2007, LB334, § 56.
Operative date July 1, 2007.

77-1250 Taxation of air carriers; when due; lien; distribution to counties; collection fee. The tax levied pursuant to section 77-1249 shall, on January 31 next following the date of levy, be a first lien from that date on the personal property, both tangible and intangible, of the person assessed until the liability is satisfied or otherwise released or discharged. Such lien shall be filed and enforced pursuant to the Uniform State Tax Lien Registration and Enforcement Act. The Property Tax Administrator shall remit the tax paid to the State Treasurer, and the tax collected, less a three percent collection fee, shall be distributed to the counties to the credit of the county general fund proportionate to the amount the total property taxes levied in the county bears to the total property taxes levied in the state as a whole, as certified pursuant to section 77-1613.01. The collection fee shall be credited by the State Treasurer to the Department of Revenue Property Assessment Division Cash Fund.

Source: Laws 1949, c. 231, § 4, p. 641; Laws 1965, c. 478, § 13, p. 1544; Laws 1973, LB 132, § 3; Laws 1979, LB 159, § 4; Laws 1979, LB 187, § 203; Laws 1980, LB 599, § 13; Laws 1983, LB 193, § 10; Laws 1986, LB 1027, § 202; Laws 1995, LB 490, § 104; Laws 1997, LB 270, § 62; Laws 1999, LB 36, § 20; Laws 2007, LB334, § 57.
Operative date July 1, 2007.

Cross Reference

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-1250.02 Aircraft; owner, lessee, manager of hangar or land, report required; violation; penalty. The owner, lessee, or manager of any aircraft hangar or land upon which is parked or located any aircraft as defined by section 3-101 shall report by February 1 of each year to the county assessor in the county in which such aircraft hangar or land is located all aircraft as defined by section 3-101 located thereon in such hangar or on such land as of January 1 of each year on a form prescribed by the Tax Commissioner. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than fifty dollars.

Source: Laws 1971, LB 26, § 2; Laws 1995, LB 490, § 105; Laws 2007, LB334, § 58.
Operative date July 1, 2007.

77-1250.03 Taxation of air carriers; taxes; delinquent; lien; collection. If any taxes levied on air carriers as defined in section 77-1244 and interest and penalties due thereon shall not have been paid on July 1, following the levy thereof, the total amount shall be a lien in favor of the State of Nebraska upon all money and credits belonging to such air carriers until the liability therefor is satisfied or otherwise released or discharged, and it shall be lawful for the Tax Commissioner or his or her designated agent to collect such total amount by issuing a distress warrant and making levy upon all money and credits belonging to such air carriers. Such lien shall be filed and enforced pursuant to the Uniform State Tax Lien Registration and Enforcement Act.

Source: Laws 1959, c. 360, § 2, p. 1277; Laws 1983, LB 193, § 8; Laws 1986, LB 1027, § 201; R.S.1943, (1986), § 77-631.02; Laws 1989, Spec. Sess., LB 7, § 5; Laws 1995, LB 490, § 106; Laws 2007, LB334, § 59.
Operative date July 1, 2007.

Cross Reference

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-1250.04 Taxation of air carriers; money and credits; surrender to Tax Commissioner. Any person or corporation in possession of any such money and credits belonging to air carriers as defined in section 77-1244 upon which levy has been made shall, upon demand of the Tax Commissioner or his or her agent, surrender the same to the Tax Commissioner or his or her agent. If any person or corporation fails or refuses to surrender the same in accordance with the requirements of this section, such person shall be liable to the State of Nebraska in a sum equal to the value of the property or rights not so surrendered but not exceeding the amount of the taxes, interest, and penalties for the collection of which such levy has been made.

Source: Laws 1959, c. 360, § 3, p. 1277; R.S.1943, (1986), § 77-631.03; Laws 1989, Spec. Sess., LB 7, § 6; Laws 1995, LB 490, § 107; Laws 2007, LB334, § 60.
Operative date July 1, 2007.

77-1250.05 Taxation of air carriers; disposition of funds collected. The money realized from any levy under sections 77-1250.03 and 77-1250.04 shall be first applied by the Tax Commissioner toward payment of any costs incurred by virtue of such levy and next to the payment of such taxes, interest, and penalties, and any balance remaining shall then be paid over to the person entitled thereto.

Source: Laws 1959, c. 360, § 4, p. 1277; R.S.1943, (1986), § 77-631.04; Laws 1989, Spec. Sess., LB 7, § 7; Laws 1995, LB 490, § 108; Laws 2007, LB334, § 61.
Operative date July 1, 2007.

ARTICLE 13

ASSESSMENT OF PROPERTY

Section.

- 77-1301.01. Appraisal; standards; establishment by Tax Commissioner; contracts; approval.
- 77-1311. County assessor; duties.
- 77-1311.02. Plan of assessment; preparation.
- 77-1311.03. County assessor; systematic inspection and review; adjustment required.
- 77-1327. Legislative intent; Property Tax Administrator; sales file; studies; powers and duties.
- 77-1330. Property Tax Administrator and Tax Commissioner; guides for assessors; prepare; issue; failure to implement guide; corrective measures; procedures; cost; payment; State Treasurer; duties; removal of county assessor or deputy from office; appeal.
- 77-1331. Property Tax Administrator; tax records; duties.

- 77-1333. Rent-restricted housing projects; county assessor; perform income-approach calculation; owner; duties.
- 77-1334. Property Tax Administrator; inspections, investigations, and studies; administration of tax laws.
- 77-1339. Joint or cooperative performance of assessment function; two or more contiguous counties; agreement; contents; approval by Tax Commissioner.
- 77-1340. County assessment function by Property Tax Administrator; procedure; cost; effect.
- 77-1342. Department of Revenue Property Assessment Division Cash Fund; created; use; investment.
- 77-1344. Agricultural or horticultural land; special valuation; when applicable.
- 77-1345. Agricultural or horticultural lands; special valuation; application.
- 77-1346. Agricultural or horticultural lands; eligibility for special valuation; rules and regulations.
- 77-1347.01. Agricultural or horticultural lands; special valuation; disqualification; procedure; protest; decision; appeal.
- 77-1348. Agricultural or horticultural land; special valuation; disqualification; effect.
- 77-1355. Greenbelt Advisory Committee; established; members; terms; duties; expenses.
- 77-1374. Improvements on leased public lands; assessment; collection of tax.
- 77-1376. Improvements on leased lands; how assessed; notice.
- 77-1392. Historically significant real property; Tax Commissioner; rules and regulations.

77-1301.01 Appraisal; standards; establishment by Tax Commissioner; contracts; approval. The Tax Commissioner shall adopt and promulgate rules and regulations to establish standards for the appraisal of classes or subclasses of real property in a county. The standards established shall require that the appraisal shall be based upon the use of manuals developed pursuant to section 77-1330 and shall arrive at a determination of taxable value on a consistent basis in accordance with the methods prescribed in sections 77-112 and 77-201. The Tax Commissioner shall also establish standards for appraisal contracts which shall, among other provisions, require that all such contracts shall require the use of manuals developed pursuant to section 77-1330. No appraisal contract shall be valid until approved in writing by the Tax Commissioner.

Source: Laws 1963, c. 450, § 2, p. 1474; Laws 1969, c. 672, § 1, p. 2594; Laws 1979, LB 159, § 5; Laws 1985, LB 30, § 3; Laws 1986, LB 817, § 9; Laws 1989, LB 361, § 7; Laws 1991, LB 320, § 3; Laws 1992, LB 1063, § 115; Laws 1992, Second Spec. Sess., LB 1, § 88; Laws 1995, LB 490, § 109; Laws 1997, LB 270, § 64; Laws 2007, LB334, § 62.
Operative date July 1, 2007.

77-1311 County assessor; duties. The county assessor shall have general supervision over and direction of the assessment of all property in his or her county. In addition to the other duties provided by law, the county assessor shall:

- (1) Annually revise the real property assessment for the correction of errors;
- (2) When a parcel has been assessed and thereafter part or parts are transferred to a different ownership, set off and apportion to each its just and equitable portion of the assessment;
- (3) Obey all rules and regulations made under Chapter 77 and the instructions and orders sent out by the Tax Commissioner and the Tax Equalization and Review Commission;

(4) Examine the records in the office of the register of deeds and county clerk for the purpose of ascertaining whether the property described in producing mineral leases, contracts, and bills of sale, have been fully and correctly listed and add to the assessment roll any property which has been omitted; and

(5) Prepare the assessment roll as defined in section 77-129 and described in section 77-1303.

Source: Laws 1903, c. 73, § 113, p. 425; Laws 1905, c. 111, § 3, p. 512; Laws 1909, c. 111, § 1, p. 442; Laws 1911, c. 104, § 12, p. 377; R.S.1913, § 6428; Laws 1921, c. 137, § 1, p. 602; C.S.1922, § 5963; C.S.1929, § 77-1609; Laws 1935, c. 133, § 4, p. 481; Laws 1935, Spec. Sess., c. 14, § 5, p. 91; Laws 1939, c. 28, § 17, p. 155; C.S.Supp.,1941, § 77-1609; R.S.1943, § 77-1311; Laws 1947, c. 250, § 24, p. 796; Laws 1951, c. 257, § 2, p. 882; Laws 1959, c. 370, § 2, p. 1303; Laws 1972, LB 1069, § 3; Laws 1979, LB 187, § 205; Laws 1986, LB 1177, § 33; Laws 1990, LB 821, § 49; Laws 1992, LB 719A, § 165; Laws 1994, LB 1275, § 10; Laws 1995, LB 490, § 121; Laws 1997, LB 270, § 67; Laws 1997, LB 397, § 13; Laws 2001, LB 170, § 5; Laws 2003, LB 292, § 11; Laws 2005, LB 263, § 8; Laws 2007, LB334, § 63.
Operative date July 1, 2007.

77-1311.02 Plan of assessment; preparation. The county assessor shall, on or before June 15 each year, prepare a plan of assessment which shall describe the assessment actions the county assessor plans to make for the next assessment year and two years thereafter. The plan shall indicate the classes or subclasses of real property that the county assessor plans to examine during the years contained in the plan of assessment. The plan shall describe all the assessment actions necessary to achieve the levels of value and quality of assessment practices required by law and the resources necessary to complete those actions. The plan shall be presented to the county board of equalization on or before July 31 each year. The county assessor may amend the plan, if necessary, after the budget is approved by the county board. A copy of the plan and any amendments thereto shall be mailed to the Department of Revenue on or before October 31 each year.

Source: Laws 2005, LB 263, § 9; Laws 2007, LB334, § 64.
Operative date July 1, 2007.

77-1311.03 County assessor; systematic inspection and review; adjustment required. On or before March 19 of each year, each county assessor shall conduct a systematic inspection and review by class or subclass of a portion of the taxable real property parcels in the county for the purpose of achieving uniform and proportionate valuations and assuring that the real property record data accurately reflects the property. The county assessor shall adjust the value of all other taxable real property parcels by class or subclass in the county so that the value of all real property is uniform and proportionate. The county assessor shall determine the portion to be inspected and reviewed each year to assure that all parcels of real property in the county have been inspected and reviewed no less frequently than every six years.

Source: Laws 2007, LB334, § 100.
Operative date July 1, 2007.

77-1327 Legislative intent; Property Tax Administrator; sales file; studies; powers and duties. (1) It is the intent of the Legislature that accurate and comprehensive information be developed by the Property Tax Administrator and made accessible to the taxing officials and property owners in order to ensure the uniformity and proportionality of the assessments of real property valuations in the state in accordance with law and to provide the statistical and narrative reports pursuant to section 77-5027.

(2) All transactions of real property for which the statement required in section 76-214 is filed shall be available for development of a sales file by the Property Tax Administrator. All transactions with stated consideration of more than one hundred dollars or upon which more than two dollars and twenty-five cents in documentary stamp taxes are paid shall be considered sales. All sales shall be deemed to be arm's length transactions unless determined to be otherwise under professionally accepted mass appraisal techniques. The Department of Revenue shall not overturn a determination made by a county assessor regarding the qualification of a sale unless the department reviews the sale and determines through the review that the determination made by the county assessor is incorrect.

(3) The Property Tax Administrator annually shall make and issue comprehensive assessment ratio studies of the average level of assessment, the degree of assessment uniformity, and the overall compliance with assessment requirements for each major class of real property subject to the property tax in each county. The comprehensive assessment ratio studies shall be developed in compliance with professionally accepted mass appraisal techniques and shall employ such statistical analysis as deemed appropriate by the Property Tax Administrator, including measures of central tendency and dispersion. The comprehensive assessment ratio studies shall be based upon the sales file as developed in subsection (2) of this section and shall be used by the Property Tax Administrator for the analysis of the level of value and quality of assessment for purposes of section 77-5027 and by the Property Tax Administrator in establishing the adjusted valuations required by section 79-1016. Such studies may also be used by assessing officials in establishing assessed valuations.

(4) For purposes of determining the level of value of agricultural and horticultural land subject to special valuation under sections 77-1343 to 77-1348, the Property Tax Administrator shall annually make and issue a comprehensive study developed in compliance with professionally accepted mass appraisal techniques to establish the level of value if in his or her opinion the level of value cannot be developed through the use of the comprehensive assessment ratio studies developed in subsection (3) of this section.

(5) The Property Tax Administrator may require assessors and other taxing officials to report data on the assessed valuation and other features of the property assessment for such periods and in such form and content as the Property Tax Administrator shall deem appropriate. The Property Tax Administrator shall so construct and maintain the system used to collect and analyze the data to enable him or her to make intracounty comparisons of assessed valuation, including school districts, as well as intercounty comparisons of assessed valuation, including school districts. The Property Tax Administrator shall include analysis

of real property sales pursuant to land contracts and similar transfers at the time of execution of the contract or similar transfer.

Source: Laws 1969, c. 622, § 3, p. 2513; Laws 1979, LB 187, § 207; Laws 1980, LB 834, § 61; Laws 1992, LB 719A, § 166; Laws 1994, LB 1275, § 11; Laws 1995, LB 452, § 19; Laws 1995, LB 490, § 124; Laws 1999, LB 36, § 29; Laws 1999, LB 194, § 21; Laws 2001, LB 170, § 7; Laws 2002, LB 994, § 14; Laws 2005, LB 40, § 8; Laws 2007, LB334, § 65.
Operative date July 1, 2007.

77-1330 Property Tax Administrator and Tax Commissioner; guides for assessors; prepare; issue; failure to implement guide; corrective measures; procedures; cost; payment; State Treasurer; duties; removal of county assessor or deputy from office; appeal. (1) The Property Tax Administrator and Tax Commissioner shall prepare, issue, and annually revise guides for county assessors in the form of property tax laws, rules, regulations, manuals, and directives. The Property Tax Administrator and Tax Commissioner may issue such directives without the necessity of compliance with the terms of the Administrative Procedure Act relating to the promulgation of rules and regulations. The assessment and appraisal function performed by counties shall comply with the standards, and county assessors shall continually use the materials in the performance of their duties. The standards shall not require the implementation of a specific computer software or hardware system if the existing software or system produces data and reports in compliance with the standards.

(2) The Property Tax Administrator, or his or her agent or representative, may examine or cause to have examined any books, papers, records, or memoranda of any county relating to the assessment of property to determine compliance with the laws, rules, regulations, manuals, and directives described in subsection (1) of this section. Such production of records shall not include the photocopying of records between January 1 and April 1. Failure to provide such records to the Property Tax Administrator may constitute grounds for the suspension of the assessor's certificate of any county assessor who willfully fails to make requested records available to the Property Tax Administrator.

(3) After an examination the Property Tax Administrator shall provide a written report of the results to the county assessor and county board. If the examination indicates a failure to meet the standards contained in the laws, rules, regulations, manuals, and directives, the Property Tax Administrator shall, in the report, set forth the facts and cause of such failures as well as corrective measures the county or county assessor may implement to correct those failures.

(4) After the issuance of the report of the results of the examination, the Property Tax Administrator may seek to order a county or county assessor to take corrective measures to remedy any failure to comply with the materials described in subsection (1) of this section. Such corrective orders may only be issued after written notice and a hearing before the Tax Commissioner conducted at least ten days after the issuance of the written notice of hearing. The performance of such corrective measures shall be implemented by the county to which the order is issued. If the county fails to implement such corrective measures, the Property Tax Administrator may seek to suspend the assessment function of the county under the terms

of subsection (5) of this section and shall implement the corrective measures pursuant to subsection (6) of this section. The performance of such corrective measures shall be a charge on the county, and upon completion, the Property Tax Administrator shall notify the county board of the cost and make demand for such cost. If payment is not received within one hundred twenty days after the start of the next fiscal year, the Tax Commissioner shall report such fact to the State Treasurer. The State Treasurer shall immediately make payment to the Department of Revenue for the costs incurred by the department for such corrective measures. The payment shall be made out of any money to which such county may be entitled under Chapter 77, articles 27 and 35, and Chapter 66, articles 4 and 6.

(5) If, within one year from the service of the order, the measures in the corrective order have not been taken, the Tax Commissioner (a) may, at any time during the continuance of such failure, issue an order requiring the county assessor and county board to show cause why the authority of the county with respect to assessments or any matter related thereto should not be suspended, (b) shall set a time and place at which the Tax Commissioner or his or her representative shall hear the county assessor and county board on the question of compliance by the county assessor or county with the laws, rules, regulations, manuals, directives, or corrective orders described in this section, and (c) after such hearing shall determine whether and to what extent the assessment function of the county shall be so suspended. Such hearing shall be held at least ten days after the issuance of such notice in the county.

(6) During the continuance of a suspension pursuant to subsection (5) of this section, the Property Tax Administrator shall succeed to the authority and duties from which the county has been suspended and shall exercise and perform the same. Such exercise and performance shall be a charge on the suspended county. The suspension shall continue until the Tax Commissioner finds that the conditions responsible for the failure to meet the minimum standards contained in the laws, rules, regulations, manuals, and directives have been corrected.

(7) The Property Tax Administrator, subject to rules and regulations to be published and furnished to every county assessor and county board, shall have the power to petition the Tax Commissioner to invalidate the certificate of any assessor or deputy assessor who willfully fails or refuses to diligently perform his or her duties in accordance with the laws, rules, regulations, manuals, and orders issued by the Tax Commissioner governing the assessment of property and the duties of each assessor and deputy assessor. No certificate shall be revoked or suspended except after notice and a hearing before the Tax Commissioner or his or her designee. Such hearing shall be held at least ten days after the issuance of such notice in the county. Prior to revocation, a one-year probationary period, subject to oversight by the Tax Commissioner, shall be imposed. At the end of the one-year probationary period, a second hearing shall be held. If assessment practices have improved, the probationary period shall end and no revocation shall be made. If assessment practices have not improved, the assessor certificate shall be revoked. If during the probationary period, the assessor continues to willfully fail or refuse to diligently perform his or her duties, the Tax Commissioner may immediately hold the second hearing. If the county assessor certificate of a person serving as

assessor or deputy assessor is revoked, such person shall be removed from office by the Tax Commissioner, the office shall be declared vacant, and such person shall not be eligible to hold that office for a period of five years after the date of removal. The Tax Commissioner shall mail a copy of his or her written order to the affected party within seven days after the date of the order.

(8) All hearings described in this section shall be governed by the Administrative Procedure Act. Any county aggrieved by a determination of the Tax Commissioner after a hearing pursuant to subsections (4) and (5) of this section or alleging that its suspension is no longer justified or any assessor or deputy assessor whose county assessor certificate has been revoked may appeal within thirty days after the date of the written order of the Tax Commissioner to the Tax Equalization and Review Commission in accordance with section 77-5013.

Source: Laws 1969, c. 622, § 6, p. 2514; Laws 1979, LB 159, § 7; Laws 1981, LB 479, § 1; Laws 1984, LB 833, § 3; Laws 1985, LB 271, § 14; Laws 1995, LB 490, § 126; Laws 1999, LB 36, § 30; Laws 1999, LB 194, § 22; Laws 2004, LB 973, § 24; Laws 2007, LB334, § 66.
Operative date July 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

Tax Equalization and Review Commission Act, see section 77-5001.

77-1331 Property Tax Administrator; tax records; duties. Pursuant to rules and regulations, the Property Tax Administrator shall, on or before July 1, 2007, develop, maintain, and enforce a uniform statewide structure for record identification codes, property record cards, property record files, and other administrative reports required for the administration of the property assessment process. The Property Tax Administrator shall not require the use of specific computer software or hardware if an existing system produces data and reports in compliance with the rules and regulations of the Tax Commissioner.

Source: Laws 1969, c. 622, § 7, p. 2514; Laws 1971, LB 155, § 1; Laws 1995, LB 490, § 127; Laws 2000, LB 968, § 46; Laws 2005, LB 263, § 10; Laws 2007, LB334, § 67.
Operative date July 1, 2007.

77-1333 Rent-restricted housing projects; county assessor; perform income-approach calculation; owner; duties. (1) The county assessor shall perform an income-approach calculation for all rent-restricted housing projects constructed to allow an allocation of low-income housing tax credits under section 42 of the Internal Revenue Code and approved by the Nebraska Investment Finance Authority when considering the assessed valuation to place on the property for each assessment year. The income-approach calculation shall be consistent with any rules and regulations adopted and promulgated by the Tax Commissioner and shall comply with professionally accepted mass appraisal techniques. Any low-income housing tax credits authorized under section 42 of the Internal Revenue Code that were granted to owners of the project shall not be considered income for purposes of the calculation but may be considered in determining the capitalization rate to be used when capitalizing the income stream. The county assessor, in determining the actual value of any

specific property, may consider other methods of determining value that are consistent with professionally accepted mass appraisal methods described in section 77-112.

(2) The owner of a rent-restricted housing project shall file a statement with the county assessor on or before October 1 of each year that details income and expense data for the prior year, a description of any land-use restrictions, and such other information as the county assessor may require.

Source: Laws 2005, LB 263, § 6; Laws 2007, LB334, § 68.
Operative date July 1, 2007.

Cross Reference

Nebraska Investment Finance Authority Act, see section 58-201.

77-1334 Property Tax Administrator; inspections, investigations, and studies; administration of tax laws. The Property Tax Administrator may make such inspections, investigations, and studies as may be necessary for the adequate administration of his or her responsibilities pursuant to the provisions of sections 77-701 to 77-706 and 77-1327 to 77-1342. Such inspections, investigations, and studies may be made in cooperation with other state agencies, and, in connection therewith, the Property Tax Administrator may utilize reports and data of other state agencies.

Source: Laws 1969, c. 622, § 10, p. 2515; Laws 1995, LB 490, § 130; Laws 1999, LB 36, § 31; Laws 2007, LB334, § 69.
Operative date July 1, 2007.

77-1339 Joint or cooperative performance of assessment function; two or more contiguous counties; agreement; contents; approval by Tax Commissioner. (1) Any two or more contiguous counties may enter into an agreement for joint or cooperative performance of the assessment function.

(2) Such agreement shall provide for:

(a) The division, merger, or consolidation of administrative functions between or among the parties, or the performance thereof by one county on behalf of all the parties;

(b) The financing of the joint or cooperative undertaking;

(c) The rights and responsibilities of the parties with respect to the direction and supervision of work to be performed under the agreement;

(d) The duration of the agreement and procedures for amendment or termination thereof; and

(e) Any other necessary or appropriate matters.

(3) The agreement may provide for the suspension of the powers and duties of the office of county assessor in any one or more of the parties.

(4) Unless the agreement provides for the performance of the assessment function by the assessor of one county for and on behalf of all other counties party thereto, the agreement shall prescribe the manner of electing the assessor, and the employees of the office, who shall serve pursuant to the agreement. Each county party to the agreement shall be represented in the procedure for choosing such assessor. No person shall be appointed assessor pursuant

to an agreement who could not be so appointed for a single county. Except to the extent made necessary by the multicounty character of the assessment agency, qualifications for employment as assessor or in the assessment agency and terms and conditions of work shall be similar to those for the personnel of a single county assessment agency. Any county may include in any one or more of its employee benefit programs an assessor serving pursuant to an agreement made under this section and the employees of the assessment agency. As nearly as practicable, such inclusion shall be on the same basis as for similar employees of a single county only. An agreement providing for the joint or cooperative performance of the assessment function may provide for such assessor and employee coverage in county employee benefit programs.

(5) No agreement made pursuant to the provisions of this section shall take effect until it has been approved in writing by the Tax Commissioner.

(6) Copies of any agreement made pursuant to the provisions of this section, and of any amendment thereto, shall be filed in the office of the Tax Commissioner and county board of the counties involved.

Source: Laws 1969, c. 622, § 15, p. 2517; Laws 1995, LB 490, § 132; Laws 2007, LB334, § 70.
Operative date July 1, 2007.

77-1340 County assessment function by Property Tax Administrator; procedure; cost; effect. (1) The county board of a county may, by resolution, request the Property Tax Administrator to assume the duties, responsibilities, and authority of the county assessor and to perform the same in and for the county. Such a resolution must be adopted on or before October 31, 2006, and every other year thereafter.

(2) If the Property Tax Administrator finds that direct state performance of the duties, responsibilities, and authority of the county assessor will be either (a) necessary or desirable for the economic and efficient performance thereof or (b) necessary or desirable for improving the quality of assessment in the state, he or she may recommend assumption of such duties, responsibilities, and authority. The Tax Commissioner shall decide whether to recommend assumption and deliver such recommendation to the Governor and the Legislature by December 15, 2006, and every other year thereafter.

(3) The Tax Commissioner may recommend assuming the duties, responsibilities, and authority of the county assessor or reject assuming such duties, responsibilities, and authority. If the Tax Commissioner rejects the request, the assessment function shall not be transferred and the county may make another request.

(4) Upon a recommendation by the Tax Commissioner that the assumption of the assessment function should be undertaken according to the criteria in subsection (2) of this section, the Tax Commissioner shall request from the Legislature a sufficient appropriation in the next regular session of the Legislature following the recommendation to assume the assessment function. If the appropriation is not made, the Tax Commissioner shall notify the county on or before July 1 that the assessment function will not be undertaken. If a sufficient

appropriation is made, the Tax Commissioner shall notify the county on or before July 1 that the assessment function will be undertaken beginning the next following July 1.

(5) If the Tax Commissioner recommends assumption of the assessment function and the Legislature makes an appropriation which the Tax Commissioner determines is sufficient to undertake the assumption, then commencing on the second July 1 after the adoption of the resolution by the county board, (a) the Property Tax Administrator shall undertake and perform the assessment function and all other duties and functions of the county assessor's office, including appraisal and reappraisal, (b) the office and functions of the county assessor shall be suspended, and (c) the performance of the assessment function by the Property Tax Administrator shall be deemed performance by the county assessor. Upon the assumption of the assessment function by the Property Tax Administrator, the term of office of the incumbent county assessor shall terminate and the county need no longer elect a county assessor pursuant to section 32-519. At that time, the county assessor and the employees of the county assessor's office shall become state employees with the status of newly hired employees except as provided in section 77-1340.02. No transferred county assessor or employee shall incur a loss of income or the right to participate in state-sponsored benefits as a result of becoming a state employee with the status of a newly hired employee pursuant to this section.

Source: Laws 1969, c. 622, § 16, p. 2519; Laws 1995, LB 490, § 133; Laws 1996, LB 1085, § 53; Laws 1997, LB 269, § 37; Laws 2002, LB 994, § 15; Laws 2005, LB 291, § 1; Laws 2007, LB334, § 71. Operative date July 1, 2007.

77-1342 Department of Revenue Property Assessment Division Cash Fund; created; use; investment. There is hereby created a fund to be known as the Department of Revenue Property Assessment Division Cash Fund to which shall be credited all money received by the Department of Revenue for services performed for county and multicounty assessment districts, for charges for publications, manuals, and lists, as an assessor's examination fee authorized by section 77-421, and under the provisions of sections 60-3,202, 77-684, and 77-1250. The fund shall be used to carry out any duties and responsibilities of the department. The county or multicounty assessment district shall be billed by the department for services rendered. Reimbursements to the department shall be credited to the fund, and expenditures therefrom shall be made only when such funds are available. The department shall only bill for the actual amount expended in performing the service.

The fund shall not, at the close of each year, be lapsed to the General Fund. Any money in the Department of Revenue Property Assessment Division 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.

Any money in the Department of Property Assessment and Taxation Cash Fund on July 1, 2007, shall be transferred to the Department of Revenue Property Assessment Division Cash Fund on such date.

Source: Laws 1969, c. 622, § 18, p. 2519; Laws 1971, LB 158, § 1; Laws 1971, LB 53, § 8; Laws 1973, LB 132, § 4; Laws 1985, LB 273, § 38; Laws 1989, Spec. Sess., LB 7, § 8; Laws 1992, LB 1063, § 123; Laws 1992, Second Spec. Sess., LB 1, § 96; Laws 1994, LB 1066, § 82; Laws 1995, LB 490, § 134; Laws 1997, LB 270, § 75; Laws 1997, LB 271, § 50; Laws 1999, LB 36, § 32; Laws 2001, LB 170, § 8; Laws 2002, LB 1310, § 9; Laws 2003, LB 563, § 42; Laws 2005, LB 274, § 272; Laws 2007, LB334, § 72.
Operative date July 1, 2007.

Cross Reference

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

77-1344 Agricultural or horticultural land; special valuation; when applicable. (1) Agricultural or horticultural land which has an actual value as defined in section 77-112 reflecting purposes or uses other than agricultural or horticultural purposes or uses shall be assessed as provided in subsection (3) of section 77-201 if the land meets the qualifications of this subsection and an application for such special valuation is filed and approved pursuant to section 77-1345. In order for the land to qualify for special valuation all of the following criteria shall be met: (a) The land is located outside the corporate boundaries of any sanitary and improvement district, city, or village except as provided in subsection (2) of this section; and (b) the land is agricultural or horticultural land.

(2) Special valuation may be applicable to agricultural or horticultural land included within the corporate boundaries of a city or village if the land is subject to a conservation or preservation easement as provided in the Conservation and Preservation Easements Act and the governing body of the city or village approves the agreement creating the easement.

(3) The eligibility of land for the special valuation provisions of this section shall be determined each year as of January 1, but if the land so qualified becomes disqualified on or before December 31 of that year, it shall be valued at its recapture value.

(4) The special valuation placed on such land by the county assessor under this section shall be subject to equalization by the county board of equalization and the Tax Equalization and Review Commission.

(5) Recapture value shall be determined only through tax year 2008. The recapture valuation placed on such land by the county assessor under this section shall be subject to equalization by the county board of equalization and the Tax Equalization and Review Commission.

Source: Laws 1974, LB 359, § 2; Laws 1983, LB 26, § 2; Laws 1985, LB 271, § 16; Laws 1989, LB 361, § 10; Laws 1991, LB 320, § 5; Laws 1996, LB 934, § 2; Laws 1996, LB 1039, § 1; Laws 1997, LB 270, § 76; Laws 1998, LB 611, § 3; Laws 2000, LB 968, § 49; Laws 2001, LB 170, § 10; Laws 2004, LB 973, § 26; Laws 2005, LB 261, § 5; Laws 2006, LB 808, § 28; Laws 2007, LB166, § 6.
Effective date March 8, 2007.

Cross Reference

Conservation and Preservation Easements Act, see section 76-2,118.

77-1345 Agricultural or horticultural lands; special valuation; application. (1) An applicant seeking special valuation under section 77-1344 shall make application to the county assessor on or before June 30 of the first year in which such valuation is requested.

(2)(a) The application shall be made upon forms prescribed by the Tax Commissioner and available from the county assessor and shall include such information as may reasonably be required to determine the eligibility of the applicant and the land.

(b) The application shall be signed by any one of the following:

(i) The applicant;

(ii) Any person of legal age duly authorized in writing to sign an application on behalf of the applicant; or

(iii) The guardian or conservator of the applicant or the executor or administrator of the applicant's estate.

(c) The assessor shall not approve an application signed by a person whose authority to sign is not a matter of public record in the county unless there is filed with the assessor a true copy of the deed, contract of sale, power of attorney, lease, or other appropriate instrument evidencing the signer's qualification pursuant to subdivision (2)(b) of this section.

(3) If the county board of equalization takes action pursuant to section 77-1504 or 77-1507, the applicant may file an application for special valuation within thirty days after the mailing of the valuation notice issued by the county board of equalization pursuant to section 77-1504 or 77-1507.

Source: Laws 1974, LB 359, § 3; Laws 1983, LB 26, § 3; Laws 1985, LB 271, § 17; Laws 1997, LB 397, § 16; Laws 2000, LB 968, § 50; Laws 2002, LB 994, § 17; Laws 2004, LB 973, § 27; Laws 2006, LB 808, § 29; Laws 2007, LB334, § 73.
Operative date July 1, 2007.

77-1346 Agricultural or horticultural lands; eligibility for special valuation; rules and regulations. The Tax Commissioner shall adopt and promulgate rules and regulations to be used by county assessors in determining eligibility for special valuation under section 77-1344 and in determining the special valuation of such land for agricultural or horticultural purposes under section 77-1344.

Source: Laws 1974, LB 359, § 4; Laws 1985, LB 271, § 18; Laws 1989, LB 361, § 11; Laws 1995, LB 490, § 135; Laws 2000, LB 968, § 52; Laws 2007, LB334, § 74.
Operative date July 1, 2007.

77-1347.01 Agricultural or horticultural lands; special valuation; disqualification; procedure; protest; decision; appeal. At any time, the county assessor may determine that land no longer qualifies for special valuation pursuant to sections 77-1344 and 77-1347. If land is deemed disqualified, the county assessor shall send a written notice of the determination to the applicant or owner within fifteen days after his or her determination, including the reason for the disqualification. A protest of the county assessor's determination may be filed with the county board of equalization within thirty days after the mailing of the notice. The county board of equalization shall decide the protest within thirty days after the filing of the protest. The county clerk shall, within seven days after the county board of

equalization's final decision, mail to the protester written notification of the board's decision. The 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. The valuation notice relating to the land subject to the county assessor's disqualification notice shall be sent in accordance with subsection (2) of section 77-1315 and the valuation may be protested pursuant to section 77-1502.

Source: Laws 2006, LB 808, § 32; Laws 2007, LB166, § 7.
Effective date March 8, 2007.

77-1348 Agricultural or horticultural land; special valuation; disqualification; effect. (1) For tax years 2007 and 2008, whenever land which has received special valuation becomes disqualified for such special valuation pursuant to section 77-1347.01, the land shall be subject to taxation at its recapture value for the year in which it became disqualified, except that a parcel disqualified solely due to the revision to the definition of agricultural land and horticultural land in section 77-1359 by Laws 2006, LB 808, shall be subject to taxation at its actual value for the year in which it became disqualified. Additionally, the assessor shall add to the tax extended against the land on the respective property tax rolls, to be collected and distributed in the same manner as other taxes levied upon real property, a tax amount equal to the sum of the following:

(a)(i) If the land becomes disqualified in 2007, the total amount of additional tax had the land been valued at eighty percent of its actual value for the preceding two years or the number of years in which special valuation was in effect if fewer than two years, except that no additional tax shall be added to the tax roll for any preceding years if the parcel was disqualified solely due to the revision to the definition of agricultural land and horticultural land in section 77-1359 by Laws 2006, LB 808; and

(ii) If the land becomes disqualified in 2008, the total amount of additional tax had the land been valued at seventy-five percent of its recapture value for the preceding year if special valuation was in effect, except that no additional tax shall be added to the tax roll for any preceding years if the parcel was disqualified solely due to the revision to the definition of agricultural land and horticultural land in section 77-1359 by Laws 2006, LB 808.

For tax years beginning in 2009, the disqualification of land for special valuation shall not result in additional taxes; and

(b) Interest upon the amounts of additional tax from each year included in subdivision (1)(a) of this section at the rate of six percent from the dates at which such additional taxes would have been payable if no special valuation had been in effect through sixty days after the notice sent pursuant to subsection (1) of this section. Upon expiration of the sixty days, the additional taxes and interest shall be delinquent and interest shall accrue at the rate provided in section 45-104.01 until paid.

(2) In cases when the designation of special valuation is removed as a result of a sale or transfer described in subdivision (2) or (3) of section 77-1347 other than an acquisition

described in subsection (3) of this section, the lien for such increased taxes and interest shall attach as of the day preceding such sale or transfer.

(3) The provisions of subsection (1) of this section do not apply if:

(a) The land was acquired by eminent domain;

(b) The land is owned by a public entity and is disqualified from special valuation because it is being used or is being developed for use in a public purpose or is exchanged for other property to be used or developed for use in a public purpose; or

(c) The land is donated to an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code or to the state or its political subdivisions and will be used by the organization, state, or political subdivision for a public, educational, religious, charitable, or cemetery purpose under section 77-202.

Source: Laws 1974, LB 359, § 6; Laws 1983, LB 26, § 5; Laws 1985, LB 271, § 20; Laws 1989, LB 361, § 13; Laws 1996, LB 1039, § 2; Laws 2000, LB 968, § 54; Laws 2002, LB 994, § 19; Laws 2004, LB 973, § 29; Laws 2006, LB 808, § 33; Laws 2007, LB 166, § 8.
Effective date March 8, 2007.

77-1355 Greenbelt Advisory Committee; established; members; terms; duties; expenses. (1) The Greenbelt Advisory Committee is established to assist and advise the Property Tax Administrator in developing uniform and proportionate special valuation of agricultural land and horticultural land which is subject to land-use controls provided for in sections 77-1343 to 77-1348. The advisory committee shall provide advice to the Tax Commissioner and the Legislature on rules and regulations under section 77-1346 and methods and practices of state and local assessing officials for such special valuation. The Tax Commissioner shall respond to the recommendations of the advisory committee and explain the basis for approval or rejection of recommendations.

(2) The advisory committee shall consist of the following members appointed by the Governor:

(a) Two active farmers;

(b) An active rancher;

(c) A real property appraiser with expertise in the appraisal of agricultural land and horticultural land;

(d) A professor of agricultural economics at the University of Nebraska Institute of Agriculture and Natural Resources;

(e) An elected county assessor or a designee of the county assessor; and

(f) An elected county commissioner or supervisor.

The members shall serve for terms of four years, except that the Governor shall designate three of the initial members to serve for two-year terms. The members shall select a chairperson from the advisory committee's membership. The advisory committee shall meet at least once annually.

(3) The advisory committee shall develop recommendations on:

(a) When using comparable sales analysis for purposes of establishing the special valuation under sections 77-1343 to 77-1348, how such information may be gathered from other counties and locations within a county;

(b) When using an income capitalization approach for such special valuation, the income and expense information to be used and the appropriate method of gathering such information;

(c) When using the income capitalization approach, the approved methods of determining the capitalization rate, including methods of gathering valid comparable sales for purposes of determining the capitalization rate on comparable agricultural land and horticultural land; and

(d) Any further revisions to sections 77-1343 to 77-1348 as the committee deems important for uniform enforcement of such sections and uniform special valuation of agricultural land and horticultural land.

(4) Methods and recommendations developed by the advisory committee shall provide for an annually updated analysis based on a three-year average of the information used. The advisory committee may develop recommendations for valuation methods which provide for special valuation of land used for specialized agricultural and horticultural crop production which is unique or localized to a specific area. The recommendations shall be provided by October 1 each year.

(5) The Property Tax Administrator shall provide administrative staff support and information as requested by the advisory committee so long as provision of staff support and information does not impair the ability of the Property Tax Administrator to carry out other statutory obligations.

(6) Members shall be reimbursed for actual and necessary expenses pursuant to sections 81-1174 to 81-1177.

Source: Laws 2000, LB 1124, § 1; Laws 2001, LB 170, § 12; Laws 2005, LB 261, § 6; Laws 2006, LB 778, § 71; Laws 2006, LB 808, § 34; Laws 2007, LB166, § 9; Laws 2007, LB334, § 75.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 166, section 9, with LB 334, section 75, to reflect all amendments.

Note: The changes made by LB 166 became effective March 8, 2007. The changes made by LB 334 became operative July 1, 2007.

77-1374 Improvements on leased public lands; assessment; collection of tax. Improvements on leased public lands shall be assessed, together with the value of the lease, to the owner of the improvements as real property. On or before March 1, following any construction thereof or any change in the improvements made on or before January 1, the owner of the improvements shall file with the county assessor an assessment application on a form prescribed by the Tax Commissioner. The taxes imposed on the improvements shall be collected in the same manner as in all other cases of collection of taxes on real property.

Source: Laws 1903, c. 73, § 35, p. 396; R.S.1913, § 6320; C.S.1922, § 5921; C.S.1929, § 77-1408; R.S.1943, § 77-1209; Laws 1963, c. 447, § 1, p. 1471; Laws 1974, LB 969, § 1; Laws 1987, LB 508, § 30; R.S.1943, (1990), § 77-1209; Laws 1992, LB 1063, § 111; Laws 1992, Second Spec. Sess., LB 1, § 84; Laws 1997, LB 270, § 82; Laws 2007, LB334, § 76.
Operative date July 1, 2007.

77-1376 Improvements on leased lands; how assessed; notice. Improvements on leased lands, other than leased public lands, shall be assessed to the owner of the leased lands unless before March 1, following any construction thereof or change in the improvements made on or before January 1, the owner of the leased lands or the lessee thereof files with the county assessor, on a form prescribed by the Tax Commissioner, a request stating that specifically designated improvements on such leased lands are the property of the lessee. The improvements shall be assessed as real property, and the taxes imposed on the improvements shall be collected by levy and sale of the interest of the owner in the same manner as in all other cases of the collection of taxes on real property. When the request is filed by the owner of the leased lands, notice shall be given by the county assessor to the lessee at the address on the request.

Source: Laws 1963, c. 434, § 1, p. 1451; Laws 1985, LB 268, § 27; Laws 1987, LB 508, § 32; R.S.1943, (1990), § 77-1209.03; Laws 1992, LB 1063, § 113; Laws 1992, Second Spec. Sess., LB 1, § 86; Laws 1995, LB 490, § 143; Laws 1997, LB 270, § 84; Laws 2007, LB334, § 77.
Operative date July 1, 2007.

77-1392 Historically significant real property; Tax Commissioner; rules and regulations. The Tax Commissioner may adopt and promulgate rules and regulations regarding the base-year valuation of historically significant real property.

Source: Laws 2005, LB 66, § 8; Laws 2007, LB334, § 78.
Operative date July 1, 2007.

ARTICLE 15

EQUALIZATION BY COUNTY BOARD

Section.

- 77-1504. Equalization of property; board; powers and duties; protest; procedure; notice of decision.
- 77-1507.01. Failure to give notice; effect.
- 77-1514. Abstracts of property assessment rolls; prepared by county assessor; file with Tax Commissioner.

77-1504 Equalization of property; board; powers and duties; protest; procedure; notice of decision. The county board of equalization may meet on or after June 1 and on or before July 25, or on or before August 10 if the board has adopted a resolution to extend the deadline for hearing protests under section 77-1502, to consider and correct the current year's assessment of any real property which has been undervalued or overvalued. The board shall give notice of the assessed value to the record owner or agent at his or her last-known address.

The county board of equalization in taking action pursuant to this section may only consider the report of the county assessor pursuant to section 77-1315.01.

Action of the county board of equalization pursuant to this section shall be for the current assessment year only.

The action of the county board of equalization may be protested to the board within thirty days after the mailing of the notice required by this section. If no protest is filed, the action of the board shall be final. If a protest is filed, the county board of equalization shall hear the protest in the manner prescribed in section 77-1502, except that all protests shall be heard and decided on or before September 15 or on or before September 30 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502. Within seven days after the county board of equalization's final decision, the county clerk shall mail to the protester written notice of the decision. The notice shall contain a statement advising the protester that a report of the decision is available at the county clerk's or county assessor's office, whichever is appropriate, and that a copy of the report may be used to complete an appeal to the Tax Equalization and Review Commission.

The action of the county board of equalization upon a protest filed pursuant to this section may be appealed to the Tax Equalization and Review Commission on or before October 15 or on or before October 30 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.

Source: Laws 1903, c. 73, § 121, p. 428; Laws 1905, c. 112, § 1, p. 515; Laws 1909, c. 112, § 1, p. 444; Laws 1911, c. 104, § 14, p. 379; R.S.1913, § 6437; C.S.1922, § 5972; C.S.1929, § 77-1702; R.S.1943, § 77-1504; Laws 1947, c. 251, § 37, p. 826; Laws 1979, LB 187, § 210; Laws 1984, LB 835, § 11; Laws 1987, LB 508, § 46; Laws 1988, LB 1207, § 8; Laws 1989, LB 361, § 21; Laws 1991, LB 320, § 11; Laws 1992, LB 1063, § 126; Laws 1992, Second Spec. Sess., LB 1, § 99; Laws 1994, LB 902, § 22; Laws 1995, LB 452, § 25; Laws 1995, LB 490, § 149; Laws 1997, LB 270, § 88; Laws 1998, LB 1104, § 10; Laws 1999, LB 194, § 25; Laws 2005, LB 263, § 13; Laws 2005, LB 283, § 3; Laws 2006, LB 808, § 38; Laws 2007, LB167, § 2.
Effective date February 10, 2007.

77-1507.01 Failure to give notice; effect. Any person otherwise having a right to appeal may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the actual value, special value, or recapture value of real property for that year if a failure to give notice prevented timely filing of a protest or appeal provided for in sections 77-1501 to 77-1510.

Source: Laws 2005, LB 15, § 5; Laws 2007, LB167, § 3.
Effective date February 10, 2007.

77-1514 Abstracts of property assessment rolls; prepared by county assessor; file with Tax Commissioner. The county assessor shall prepare abstracts of the property assessment rolls of locally assessed property of his or her county on forms prescribed and furnished by the Tax Commissioner. The county assessor shall file the real property abstract with the Property Tax Administrator on or before March 19 and the personal property abstract on or before June 15. The abstracts shall show the taxable value of real or personal property in the county as determined by the county assessor and any other information as required by the Property Tax Administrator. The Property Tax Administrator, upon written request from the county assessor, may for good cause shown extend the final filing due date for the real property abstract and the statutory deadlines provided in section 77-5027. The Property

Tax Administrator may extend the statutory deadline in section 77-5028 for a county if the deadline is extended for that county.

Source: Laws 1903, c. 73, § 125, p. 431; R.S.1913, § 6442; C.S.1922, § 5977; C.S.1929, § 77-1707; R.S.1943, § 77-1514; Laws 1945, c. 190, § 1, p. 590; Laws 1947, c. 251, § 39, p. 827; Laws 1959, c. 371, § 4, p. 1309; Laws 1987, LB 508, § 49; Laws 1992, LB 1063, § 129; Laws 1992, Second Spec. Sess., LB 1, § 102; Laws 1994, LB 902, § 24; Laws 1995, LB 452, § 28; Laws 1995, LB 490, § 155; Laws 1997, LB 270, § 91; Laws 1999, LB 194, § 28; Laws 2000, LB 968, § 59; Laws 2004, LB 973, § 37; Laws 2005, LB 15, § 6; Laws 2005, LB 261, § 7; Laws 2007, LB334, § 79.
Operative date July 1, 2007.

ARTICLE 16

LEVY AND TAX LIST

Section.

77-1613.01. Certification by county official to Tax Commissioner; contents.

77-1613.02. Tax list; corrections; prohibited acts; violation; penalty.

77-1613.01 Certification by county official to Tax Commissioner; contents. The county assessor or county clerk shall certify to the Property Tax Administrator, on or before December 1 of each year, the total taxable valuation and the Certificate of Taxes Levied. The certificate shall be used for statistical purposes and shall specify the information necessary to determine the total taxable value, tax levies, and total property taxes requested by the political subdivisions for the current year on forms prescribed and furnished by the Tax Commissioner. The certificate shall include for each political subdivision a statement of the amount of property taxes sought and the tax levy made for (1) the payment of principal or interest on bonds issued by the political subdivision and (2) all other purposes.

Source: Laws 1913, c. 173, § 1, p. 525; R.S.1913, § 6389; Laws 1921, c. 133, art. VI, § 15, p. 560; C.S.1922, § 5853; C.S.1929, § 77-515; R.S.1943, § 77-628; Laws 1949, c. 227, § 3, p. 632; Laws 1951, c. 259, § 2, p. 885; Laws 1965, c. 478, § 4, p. 1541; Laws 1983, LB 193, § 3; Laws 1985, LB 268, § 24; R.S.1943, (1986), § 77-628; Laws 1989, Spec. Sess., LB 7, § 3; Laws 1991, LB 829, § 10; Laws 1992, LB 719A, § 172; Laws 1995, LB 490, § 159; Laws 1996, LB 1362, § 7; Laws 1997, LB 269, § 50; Laws 1998, LB 306, § 28; Laws 2001, LB 275, § 1; Laws 2007, LB334, § 80.
Operative date July 1, 2007.

77-1613.02 Tax list; corrections; prohibited acts; violation; penalty. The county assessor or county clerk shall correct the assessment and tax rolls after action of the county board of equalization. Each correction shall be made in triplicate, each set of triplicate forms being consecutively numbered, and there shall be entered upon such form all data pertaining to the assessment which is to be corrected. The correction shall show all additions and reductions, the amount of tax added or reduced, with the reason therefor, and the page or pages of the tax rolls upon which such change is to be made. The original copy shall be delivered to the county treasurer, the duplicate copy to the county clerk, and the triplicate copy shall remain in the office of the county assessor. The county assessor or county clerk shall provide upon demand a listing showing each entry and sorted by tax year. The county treasurer shall thereupon correct the tax roll to conform to the correction copy and all changes shall be made

in red ink, drawing a line through the original or erroneous figures, but not erasing the same. No county assessor shall reduce or increase the valuation of any property, real or personal, without the approval of the county board of equalization. Any county assessor who shall willfully reduce or increase the valuation of any property, without the approval of the county board of equalization, as provided in this section, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than twenty dollars nor more than one hundred dollars.

Source: Laws 1921, c. 133, art. XI, § 6, p. 592; C.S.1922, § 5903; C.S.1929, § 77-1006; Laws 1939, c. 100, § 1, p. 457; C.S.Supp.,1941, § 77-1006; R.S.1943, § 77-519; Laws 1947, c. 250, § 12, p. 791; Laws 1951, c. 261, § 1, p. 887; R.S.1943, (1986), § 77-519; Laws 1995, LB 490, § 160; Laws 1997, LB 270, § 93; Laws 2007, LB166, § 10.
Effective date March 8, 2007.

ARTICLE 17

COLLECTION OF TAXES

Section.

- 77-1735. Illegal tax paid; claim for refund; procedure.
- 77-1736.06. Property tax refund; procedure.
- 77-1749. Collection of taxes; settlement of county treasurer; credit for delinquent taxes; audit of treasurer's books.
- 77-1750. Collection of taxes; settlement of county treasurer; adjustment with county clerk; order by county board.
- 77-1763. Collection of taxes; failure to make settlement with state; suit by Tax Commissioner.
- 77-1766. Collection of taxes; suit by aggrieved municipal corporations.
- 77-1775. Tax paid as result of clerical error, misunderstanding, or mistake; refund or credit; procedure.

77-1735 Illegal tax paid; claim for refund; procedure. (1) Except as provided in subsection (2) of this section, if a person makes a payment to any county or other political subdivision of any property tax or any payment in lieu of tax with respect to property and claims the tax or any part thereof is illegal for any reason other than the valuation or equalization of the property, he or she may, at any time within thirty days after such payment, make a written claim for refund of the payment from the county treasurer to whom paid. The county treasurer shall immediately forward the claim to the county board. If the payment is not refunded within ninety days thereafter, the claimant may sue the county board for the amount so claimed. Upon the trial, if it is determined that such tax or any part thereof was illegal, judgment shall be rendered therefor and such judgment shall be collected in the manner prescribed in section 77-1736.06. If the tax so claimed to be illegal was not collected for all political subdivisions in a consolidated tax district and if a suit is brought to recover the tax paid or a part thereof, the plaintiff in such action shall join as defendants in a single suit as many of the political subdivisions as he or she seeks recovery from by stating in the petition a claim against each such political subdivision as a separate cause of action. For purposes

of this section, illegal shall mean a tax levied for an unauthorized purpose or as a result of fraudulent conduct on the part of the taxing officials. A person shall not be entitled to a refund pursuant to this section of any property tax paid or any payment in lieu of tax unless the person has filed a claim with the county treasurer or prevailed in an action against the county. If a county refuses to make a refund, a person shall not be entitled to a refund unless he or she prevails in an action against the county on such claim even if another person has successfully challenged a similar tax or payment.

(2) For property valued by the state, for purposes of a claim for refund pursuant to this section, the Tax Commissioner shall perform the functions of the county treasurer and county board. Upon approval of the claim by the Tax Commissioner or a court of competent jurisdiction, the Tax Commissioner shall certify the amount of the refund to the county treasurer to whom this tax was paid or distributed. The refund shall be made in the manner prescribed in section 77-1736.06.

Source: Laws 1903, c. 73, § 162, p. 447; R.S.1913, § 6491; C.S.1922, § 6018; C.S.1929, § 77-1923; R.S.1943, § 77-1735; Laws 1955, c. 297, § 2, p. 931; Laws 1967, c. 505, § 1, p. 1702; Laws 1977, LB 245, § 2; Laws 1984, LB 835, § 15; Laws 1989, LB 762, § 3; Laws 1991, LB 829, § 13; Laws 1992, Fourth Spec. Sess., LB 1, § 16; Laws 1995, LB 490, § 166; Laws 2007, LB334, § 81.
Operative date July 1, 2007.

Cross Reference

Recovery of payments made under tax statutes adjudged unconstitutional, time for bringing action for, see section 25-208.

77-1736.06 Property tax refund; procedure. The following procedure shall apply when making a property tax refund:

(1) Within thirty days of the entry of a final nonappealable order or other action approving a refund or, for property valued by the state, within thirty days of a recertification of value by the Property Tax Administrator pursuant to section 77-1775 or 77-1775.01, the county assessor shall determine the amount of refund due the person entitled to the refund, certify that amount to the county treasurer, and send a copy of such certification to the person entitled to the refund. Within thirty days from the date the county assessor certifies the amount of the refund, the county treasurer shall notify each political subdivision of its respective share of the refund, except that for any political subdivision whose share of the refund is two hundred dollars or less, the county board may waive this notice requirement. Notification shall be by first-class mail, postage prepaid, to the last-known address of record of the political subdivision. The county treasurer shall pay the refund from funds in his or her possession belonging to any political subdivision which received any part of the tax or penalty being refunded. If sufficient funds are not available or the political subdivision, within thirty days of the mailing of the notice by the county treasurer if applicable, certifies to the county treasurer that a hardship would result and create a serious interference with its governmental functions if the refund of the tax or penalty is paid, the county treasurer shall register the refund or portion thereof which remains unpaid as a claim against such political subdivision and shall issue the person entitled to the refund a receipt for the registration of the claim. The certification by a political subdivision declaring a hardship shall be binding upon the county treasurer;

(2) The refund of a tax or penalty or the receipt for the registration of a claim made or issued pursuant to this section shall be satisfied in full as soon as practicable and in no event later than five years from the date the final order or other action approving a refund is entered. The governing body of the political subdivision shall make provisions in its budget for the amount of any refund or claim to be satisfied pursuant to this section. If a receipt for the registration of a claim is given:

(a) Such receipt shall be applied to satisfy any tax levied or assessed by that political subdivision next falling due from the person holding the receipt after the sixth next succeeding levy is made on behalf of the political subdivision following the final order or other action approving the refund; and

(b) To the extent the amount of such receipt exceeds the amount of such tax liability, the unsatisfied balance of the receipt shall be paid and satisfied within the five-year period prescribed in this subsection from a combination of a credit against taxes anticipated to be due to the political subdivision during such period and cash payment from any funds expected to accrue to the political subdivision pursuant to a written plan to be filed by the political subdivision with the county treasurer no later than thirty days after the claim against the political subdivision is first reduced by operation of a credit against taxes due to such political subdivision.

If a political subdivision fails to fully satisfy the refund or claim prior to the sixth next succeeding levy following the entry of a final nonappealable order or other action approving a refund, interest shall accrue on the unpaid balance commencing on the sixth next succeeding levy following such entry or action at the rate set forth in section 45-103;

(3) The county treasurer shall mail the refund or the receipt by first-class mail, postage prepaid, to the last-known address of the person entitled thereto. Multiple refunds to the same person may be combined into one refund or credit. If a refund is not claimed by June 1 of the year following the year of mailing, the refund shall be canceled and the resultant amount credited to the various funds originally charged;

(4) When the refund involves property valued by the state, the Tax Commissioner shall be authorized to negotiate a settlement of the amount of the refund or claim due pursuant to this section on behalf of the political subdivision from which such refund or claim is due. Any political subdivision which does not agree with the settlement terms as negotiated may reject such terms, and the refund or claim due from the political subdivision then shall be satisfied as set forth in this section as if no such negotiation had occurred;

(5) In the event that the Legislature appropriates state funds to be disbursed for the purposes of satisfying all or any portion of any refund or claim, the Tax Commissioner shall order the county treasurer to disburse such refund amounts directly to the persons entitled to the refund in partial or total satisfaction of such persons' claims. The county treasurer shall disburse such amounts within forty-five days after receipt thereof; and

(6) If all or any portion of the refund is reduced by way of settlement or forgiveness by the person entitled to the refund, the proportionate amount of the refund that was paid by an

appropriation of state funds shall be reimbursed by the county treasurer to the State Treasurer within forty-five days after receipt of the settlement agreement or receipt of the forgiven refund. The amount so reimbursed shall be credited to the General Fund.

Source: Laws 1991, LB 829, § 15; Laws 1992, LB 1063, § 138; Laws 1992, Second Spec. Sess., LB 1, § 111; Laws 1993, LB 555, § 1; Laws 1995, LB 490, § 167; Laws 2007, LB334, § 82.
Operative date July 1, 2007.

77-1749 Collection of taxes; settlement of county treasurer; credit for delinquent taxes; audit of treasurer's books. The Tax Commissioner and other proper authority or person shall in his or her final settlement with the treasurer allow him or her credit for the amount so certified, but if the Tax Commissioner or other proper authority or person shall have reason to believe that the amount stated in the certificate is not correct, or that the allowance was illegally made, he or she shall return the same for correction. When it appears to be necessary in the opinion of the Tax Commissioner or other proper authority or person, he or she shall designate and appoint some competent person to examine the treasurer's books and statement of settlement, and the person so designated and appointed shall have access to the treasurer's books and papers appertaining to such treasurer's office or settlement for the purpose of making such examination.

Source: Laws 1903, c. 73, § 174, p. 453; R.S.1913, § 6502; C.S.1922, § 6030; C.S.1929, § 77-1935; R.S.1943, § 77-1749; Laws 1995, LB 490, § 169; Laws 2007, LB334, § 83.
Operative date July 1, 2007.

77-1750 Collection of taxes; settlement of county treasurer; adjustment with county clerk; order by county board. In all cases when the adjustment is made with the county clerk, the county board shall, at the first session thereafter, examine such settlement and if found correct shall enter an order to that effect. If any omission or error is found, the board shall cause the same to be corrected and a correct statement of the facts in the case forwarded to the Tax Commissioner and other proper authority or person who shall correct and adjust the treasurer's accounts accordingly.

Source: Laws 1903, c. 73, § 175, p. 453; R.S.1913, § 6503; C.S.1922, § 6031; C.S.1929, § 77-1936; R.S.1943, § 77-1750; Laws 1995, LB 490, § 170; Laws 2007, LB334, § 84.
Operative date July 1, 2007.

77-1763 Collection of taxes; failure to make settlement with state; suit by Tax Commissioner. Upon the failure of any county treasurer to make settlement with the Tax Commissioner, the Tax Commissioner shall sue the treasurer and his or her surety upon the bond of such treasurer, or sue the treasurer in such form as may be necessary, and take all such proceedings, either upon such bond or otherwise, as may be necessary to protect the interest of the state.

Source: Laws 1903, c. 73, § 187, p. 457; R.S.1913, § 6515; C.S.1922, § 6043; C.S.1929, § 77-1948; R.S.1943, § 77-1763; Laws 1995, LB 490, § 172; Laws 2007, LB334, § 85.
Operative date July 1, 2007.

77-1766 Collection of taxes; suit by aggrieved municipal corporations. Cities, towns, villages, or corporate authorities or persons aggrieved may prosecute suit against any treasurer, or other officer collecting or receiving funds for their use, upon his or her bond, in the name of the State of Nebraska, for their use in any court of competent jurisdiction, whether the bond has been put in suit at the instance of the Tax Commissioner or not. Cities, towns, villages, and other corporate authorities or persons shall have the same right in any suits or proceedings in their behalf as is provided in case of suits by or on behalf of the state.

Source: Laws 1903, c. 73, § 189, p. 457; R.S.1913, § 6517; C.S.1922, § 6045; C.S.1929, § 77-1950; R.S.1943, § 77-1766; Laws 1995, LB 490, § 173; Laws 2007, LB334, § 86.
Operative date July 1, 2007.

77-1775 Tax paid as result of clerical error, misunderstanding, or mistake; refund or credit; procedure. (1) In case of payment of any taxes upon property valued by the state made as a result of a clerical error or honest mistake or misunderstanding, except as to valuation or equalization, on the part of the taxing officials of the state or the taxpayer, the taxpayer shall make a written claim for a credit or refund of the tax paid within two years from the date the tax was due. The claim shall set forth the amount of the overpayment and the reasons therefor.

(2) The Tax Commissioner may approve or disapprove the claim in whole or part without a hearing. The Tax Commissioner shall grant a hearing prior to taking any action on a claim for refund or credit if requested in writing by the taxpayer when the claim is filed or prior to any action being taken on the claim by the Tax Commissioner. The written order of the Tax Commissioner shall be mailed to the claimant within seven days after the date of the order. If the claim is denied in whole or part, the taxpayer may appeal within thirty days after the date of the written order of the Tax Commissioner to the Tax Equalization and Review Commission in accordance with section 77-5013.

(3) Upon approval of the claim by the Tax Commissioner, the Tax Commissioner shall certify the amount of the refund or credit to the county treasurer to whom the tax was paid or distributed. If only valuation was previously certified to a county or counties, then the Tax Commissioner shall certify the value resulting from the written order to the official who received the original valuation which was changed by the written order. The refund shall be made in the manner prescribed in section 77-1736.06. The ordering of a refund or credit pursuant to this section shall not have a dispositional effect on any similar claim for refund or credit made by another taxpayer.

Source: Laws 1983, LB 193, § 12; Laws 1988, LB 352, § 157; Laws 1989, LB 762, § 5; Laws 1991, LB 829, § 17; Laws 1995, LB 490, § 174; Laws 2004, LB 973, § 42; Laws 2007, LB334, § 87.
Operative date July 1, 2007.

Cross Reference

Tax Equalization and Review Commission Act, see section 77-5001.

ARTICLE 20

INHERITANCE TAX

Section.

- 77-2004. Inheritance tax; rate; transfer to immediate relatives; exemption.
- 77-2005. Inheritance tax; rate; transfer to remote relatives.
- 77-2006. Inheritance tax; rate; other transfers.
- 77-2010. Inheritance tax; when due; interest; bond; failure to file; penalty.
- 77-2014. Inheritance tax; payment by personal representative or trustee; where paid; receipt for tax; proper county, defined; tax apportioned among counties.
- 77-2040. Inheritance tax; estate tax; decedent dying after December 31, 1982; provisions applicable; changes applicable January 1, 2008.

77-2004 Inheritance tax; rate; transfer to immediate relatives; exemption. In the case of a father, mother, grandfather, grandmother, brother, sister, son, daughter, child or children legally adopted as such in conformity with the laws of the state where adopted, any lineal descendant, any lineal descendant legally adopted as such in conformity with the laws of the state where adopted, any person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent, or the spouse or surviving spouse of any such persons, the rate of tax shall be one percent of the clear market value of the property in excess of forty thousand dollars received by each person. Any interest in property, including any interest acquired in the manner set forth in section 77-2002, which may be valued at a sum less than forty thousand dollars shall not be subject to tax. In addition the homestead allowance, exempt property, and family maintenance allowance shall not be subject to tax. Interests passing to the surviving spouse by will, in the manner set forth in section 77-2002, or in any other manner shall not be subject to tax.

Source: Laws 1901, c. 54, § 1, p. 414; Laws 1905, c. 117, § 1, p. 523; Laws 1907, c. 103, § 1, p. 356; R.S.1913, § 6622; C.S.1922, § 6153; Laws 1923, c. 187, § 1, p. 430; C.S.1929, § 77-2201; Laws 1931, c. 132, § 1, p. 371; C.S.Supp.,1941, § 77-2201; R.S.1943, § 77-2004; Laws 1951, c. 267, § 3, p. 900; Laws 1953, c. 282, § 2, p. 914; Laws 1957, c. 337, § 1, p. 1174; Laws 1965, c. 497, § 1, p. 1585; Laws 1975, LB 481, § 31; Laws 1976, LB 585, § 4; Laws 1977, LB 456, § 1; Laws 1982, LB 480, § 4; Laws 1988, LB 845, § 1; Laws 1997, LB 16, § 1; Laws 2007, LB502, § 1.
Effective date September 1, 2007.

77-2005 Inheritance tax; rate; transfer to remote relatives. In the case of an uncle, aunt, niece, or nephew related to the deceased by blood or legal adoption, or other lineal descendant of the same, or the spouse or surviving spouse of any of such persons, the rate of tax shall be thirteen percent of the clear market value of the property received by each person in excess of fifteen thousand dollars. If the clear market value of the beneficial interest is fifteen thousand dollars or less, it shall not be subject to tax.

Source: Laws 1901, c. 54, § 1, p. 414; Laws 1905, c. 117, § 1, p. 523; Laws 1907, c. 103, § 1, p. 356; R.S.1913, § 6622; C.S.1922, § 6153; Laws 1923, c. 187, § 1, p. 430; C.S.1929, § 77-2201; Laws 1931, c. 132, § 1, p. 371; C.S.Supp.,1941, § 77-2201; R.S.1943, § 77-2005; Laws 1947, c. 262, § 1, p. 851; Laws 1951, c. 267, § 4, p. 900; Laws 1959, c. 353, § 5, p. 1245; Laws 1965, c. 497, § 2, p. 1586; Laws 1976, LB 585, § 5; Laws 2007, LB502, § 2.
Effective date September 1, 2007.

77-2006 Inheritance tax; rate; other transfers. In all other cases the rate of tax shall be eighteen percent on the clear market value of the beneficial interests in excess of ten thousand dollars. Such rates of tax shall be applied to the clear market value of the beneficial interests in excess of ten thousand dollars received by each person. If the clear market value of the beneficial interest is ten thousand dollars or less, it shall not be subject to any tax.

Source: Laws 1901, c. 54, § 1, p. 414; Laws 1905, c. 117, § 1, p. 523; Laws 1907, c. 103, § 1, p. 356; R.S.1913, § 6622; C.S.1922, § 6153; Laws 1923, c. 187, § 1, p. 430; C.S.1929, § 77-2201; Laws 1931, c. 132, § 1, p. 371; C.S.Supp.,1941, § 77-2201; R.S.1943, § 77-2006; Laws 1947, c. 262, § 2, p. 851; Laws 1965, c. 497, § 3, p. 1586; Laws 1988, LB 845, § 2; Laws 2007, LB502, § 3. Effective date September 1, 2007.

77-2010 Inheritance tax; when due; interest; bond; failure to file; penalty. All taxes imposed by sections 77-2001 to 77-2037, unless otherwise herein provided for, shall be due and payable twelve months after the date of the death of the decedent, and 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 charged and collected on any unpaid taxes due from the date the same became payable, and in all cases in which the personal representatives or trustees do not pay such tax within twelve months from the death of the decedent, they shall be required to give bond in the form and to the effect prescribed in section 77-2009 for the payment of the tax together with interest. In addition, for failure to file an appropriate proceeding for the determination of the tax within twelve months after the date of the death of the decedent there shall be added to the amount due a penalty of five percent per month, up to a maximum penalty of twenty-five percent of the unpaid taxes due.

Source: Laws 1901, c. 54, § 3, p. 416; Laws 1911, c. 107, § 1, p. 386; R.S.1913, § 6624; C.S.1922, § 6155; C.S.1929, § 77-2203; R.S.1943, § 77-2010; Laws 1951, c. 267, § 5, p. 901; Laws 1976, LB 585, § 10; Laws 1978, LB 650, § 29; Laws 1981, LB 167, § 48; Laws 2007, LB502, § 4. Effective date September 1, 2007.

77-2014 Inheritance tax; payment by personal representative or trustee; where paid; receipt for tax; proper county, defined; tax apportioned among counties. (1) Every sum of money retained by an executor, administrator, or trustee, or paid into his or her hands for any tax on any property, shall be paid by him or her within thirty days thereafter to the county treasurer of the proper county, and the county treasurer shall give, and every executor, administrator, or trustee shall take a receipt from him or her of such payments.

(2)(a) For purposes of this section, proper county shall mean the county of the decedent's residence, except (i) when the decedent had an interest in real property located in a county other than his or her residence at the time of the death of the decedent, the words proper county shall mean the county in which the real property is situated, or (ii) when the decedent had an interest in personal property subject to being listed and assessed for personal property taxation at the time of the death of the decedent, the words proper county shall mean the county where the property is listed and assessed.

(b) When the decedent is a nonresident, proper county shall mean the county provided in subdivisions (2)(a)(i) and (2)(a)(ii) of this section and, as to any other property which may be subject to Nebraska inheritance taxation, the county where such property is located.

(3) The total inheritance tax assessed against the estate shall be apportioned among the counties in the ratio that the value of the gross property subject to tax and not subject to tax under sections 77-2004, 77-2006, and 77-2007.04 located in each county bears to the gross value of all property subject to tax and not subject to tax under sections 77-2004, 77-2006, and 77-2007.04.

(4) Questions that may arise as to the proper place to list and assess such personal property for the purposes of sections 77-2001 to 77-2037 shall be determined pursuant to procedure set forth in sections 77-2018.01 to 77-2027.

Source: Laws 1901, c. 54, § 6, p. 417; Laws 1905, c. 117, § 1, p. 525; R.S.1913, § 6627; C.S.1922, § 6158; C.S.1929, § 77-2206; R.S.1943, § 77-2014; Laws 1953, c. 282, § 6, p. 916; Laws 1976, LB 585, § 13; Laws 2007, LB364, § 1.
Effective date September 1, 2007.

77-2040 Inheritance tax; estate tax; decedent dying after December 31, 1982; provisions applicable; changes applicable January 1, 2008. Sections 77-2002 to 77-2004 and 77-2102 shall become operative on December 31, 1982, and shall apply to all property which passes from a decedent dying after such date. Sections 77-2001, 77-2032, and 77-2106 shall become operative on July 17, 1982. The changes made in sections 77-2004 to 77-2006 by Laws 2007, LB 502, apply to all property which passes from a decedent dying on or after January 1, 2008. The changes made to section 77-2010 by Laws 2007, LB 502, apply to decedents dying on or after January 1, 2008.

Source: Laws 1982, LB 480, § 8; Laws 2007, LB502, § 5.
Effective date September 1, 2007.

ARTICLE 21

ESTATE AND GENERATION-SKIPPING TRANSFER TAX

Section.

77-2101.01. Estate tax; amount.

77-2101.02. Generation-skipping transfer tax; amount.

77-2101.03. Tax; calculation.

77-2101.01 Estate tax; amount. (1) In addition to the inheritance taxes imposed by the laws of the State of Nebraska, there is levied and imposed an estate or excise tax for all decedents dying before January 1, 2007, upon the transfer of the estate of every resident decedent and upon the value of any interest in Nebraska real estate and tangible personal property situated in Nebraska of a nonresident decedent.

(2) For decedents dying before January 1, 2003, the amount of such tax shall be the maximum state tax credit allowance upon the tax imposed by Chapter 11 of the Internal Revenue Code reduced by the lesser of (a) the aggregate amount of all estate, inheritance,

legacy, or succession taxes paid to any state or territory, the District of Columbia, or any possession of the United States in respect of any property subject to such tax or (b) the sum of (i) the amount determined by multiplying the maximum state tax credit allowance with respect to the taxable transfer by the percentage which the gross value of the transferred property not situated in Nebraska bears to the gross value of the transferred property and (ii) the amount of Nebraska inheritance taxes paid.

(3) For all decedents dying on or after January 1, 2003, and before January 1, 2007, (a) for the estate of every resident decedent, the amount of such tax shall be the amount calculated in section 77-2101.03 reduced by the percentage which the gross value of the transferred property not situated in Nebraska bears to the gross value of the transferred property minus the amount of Nebraska inheritance taxes paid, and (b) for the estate of every nonresident decedent, the amount of such tax shall be the amount calculated in section 77-2101.03 multiplied by the percentage which the gross value of the transferred property situated in Nebraska bears to the gross value of the transferred property minus the amount of Nebraska inheritance taxes paid.

Source: Laws 1955, c. 302, § 2, p. 941; Laws 1976, LB 585, § 24; Laws 1978, LB 650, § 31; Laws 1992, LB 1004, § 3; Laws 1995, LB 574, § 68; Laws 2002, LB 905, § 2; Laws 2005, LB 499, § 1; Laws 2007, LB367, § 6.
Operative date May 19, 2007.

77-2101.02 Generation-skipping transfer tax; amount. For all generation-skipping transfers occurring before January 1, 2007, there is hereby imposed a generation-skipping transfer tax upon the generation-skipping transfer or distribution of property of every resident of this state and upon the generation-skipping transfer of Nebraska real estate and tangible personal property situated in Nebraska by a nonresident. The amount of the generation-skipping transfer tax shall be the amount calculated in section 77-2101.03 reduced by the lesser of (1) the aggregate amount of all transfer taxes paid to any state or territory, the District of Columbia, or any possession of the United States in respect of any property subject to the generation-skipping transfer tax or (2) the amount determined by multiplying the amount calculated in section 77-2101.03 with respect to the taxable transfer by the percentage which the gross value of the transferred property not situated in Nebraska bears to the gross value of the transferred property.

Source: Laws 1992, LB 1004, § 4; Laws 1993, LB 345, § 12; Laws 1995, LB 574, § 69; Laws 2002, LB 905, § 3; Laws 2007, LB367, § 7.
Operative date May 19, 2007.

77-2101.03 Tax; calculation. (1) For decedents dying on or after January 1, 2003, and before July 1, 2003, the tax on the Nebraska taxable estate shall be the greater of the maximum state tax credit allowance upon the tax imposed under Chapter 11 of the Internal Revenue Code or the amount provided in the following table:

Nebraska taxable estate

At least	But less than	Tax =	+	%	Of Excess Over
\$0	\$40,000	\$0		0	\$0
40,000	90,000	0		.8	40,000
90,000	140,000	400		1.6	90,000
140,000	240,000	1,200		2.4	140,000
240,000	440,000	3,600		3.2	240,000
440,000	640,000	10,000		4	440,000
640,000	840,000	18,000		4.8	640,000
840,000	1,040,000	27,600		5.6	840,000
1,040,000	1,540,000	38,800		6.4	1,040,000
1,540,000	2,040,000	70,800		7.2	1,540,000
2,040,000	2,540,000	106,800		8	2,040,000
2,540,000	3,040,000	146,800		8.8	2,540,000
3,040,000	3,540,000	190,800		9.6	3,040,000
3,540,000	4,040,000	238,800		10.4	3,540,000
4,040,000	5,040,000	290,800		11.2	4,040,000
5,040,000	6,040,000	402,800		12	5,040,000
6,040,000	7,040,000	522,800		12.8	6,040,000
7,040,000	8,040,000	650,800		13.6	7,040,000
8,040,000	9,040,000	786,800		14.4	8,040,000
9,040,000	10,040,000	930,800		15.2	9,040,000
10,040,000		1,082,800		16	10,040,000

(2) For decedents dying on or after July 1, 2003, and before January 1, 2007, the tax on the Nebraska taxable estate shall be the greater of the maximum state tax credit allowance upon the tax imposed under Chapter 11 of the Internal Revenue Code or the amount provided in the following table:

Nebraska taxable estate

At least	But less than	Tax =	+	%	Of Excess Over
\$0	\$100,000	\$0		5.6	\$0
100,000	500,000	5,600		6.4	100,000
500,000	1,000,000	31,200		7.2	500,000

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1,000,000	1,500,000	67,200	8	1,000,000
1,500,000	2,000,000	107,200	8.8	1,500,000
2,000,000	2,500,000	151,200	9.6	2,000,000
2,500,000	3,000,000	199,200	10.4	2,500,000
3,000,000	3,500,000	251,200	11.2	3,000,000
3,500,000	4,000,000	307,200	12	3,500,000
4,000,000	5,000,000	367,200	12.8	4,000,000
5,000,000	6,000,000	495,200	13.6	5,000,000
6,000,000	7,000,000	631,200	14.4	6,000,000
7,000,000	8,000,000	775,200	15.2	7,000,000
8,000,000	9,000,000	927,200	16	8,000,000
9,000,000		1,087,200	16.8	9,000,000

(3) Taxable generation-skipping transfers shall be taxed at a rate of sixteen percent of the Nebraska taxable transfer.

Source: Laws 2002, LB 905, § 4; Laws 2003, LB 283, § 2; Laws 2003, LB 759, § 2; Laws 2004, LB 1034, § 1; Laws 2007, LB367, § 8.
Operative date May 19, 2007.

ARTICLE 26

CIGARETTE TAX

Section.

77-2602. Cigarette tax; rate; disposition of proceeds; priority.

77-2602 Cigarette tax; rate; disposition of proceeds; priority. (1) Every person engaged in distributing or selling cigarettes at wholesale in this state shall pay to the Tax Commissioner of this state a special privilege tax. This shall be in addition to all other taxes. It shall be paid prior to or at the time of the sale, gift, or delivery to the retail dealer in the several amounts as follows: On each package of cigarettes containing not more than twenty cigarettes, sixty-four cents per package; and on packages containing more than twenty cigarettes, the same tax as provided on packages containing not more than twenty cigarettes for the first twenty cigarettes in each package and a tax of one-twentieth of the tax on the first twenty cigarettes on each cigarette in excess of twenty cigarettes in each package.

(2) Beginning October 1, 2004, the State Treasurer shall place the equivalent of forty-nine cents of such tax in the General Fund. The State Treasurer shall reduce the amount placed in the General Fund under this subsection by the amount prescribed in subdivision (3)(d) of this section. For purposes of this section, the equivalent of a specified number of cents of the tax shall mean that portion of the proceeds of the tax equal to the specified number divided by the tax rate per package of cigarettes containing not more than twenty cigarettes.

(3) The State Treasurer shall distribute the remaining proceeds of such tax in the following order:

(a) First, beginning July 1, 1980, the State Treasurer shall place the equivalent of one cent of such tax in the Nebraska Outdoor Recreation Development Cash Fund. For fiscal year distributions occurring after FY1998-99, the distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount shall reduce the distribution to the General Fund;

(b) Second, beginning July 1, 1993, the State Treasurer shall place the equivalent of three cents of such tax in the Health and Human Services Cash Fund to carry out sections 81-637 to 81-640. For fiscal year distributions occurring after FY1998-99, the distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount shall reduce the distribution to the General Fund;

(c) Third, beginning October 1, 2002, and continuing until all the purposes of the Deferred Building Renewal Act have been fulfilled, the State Treasurer shall place the equivalent of seven cents of such tax in the Building Renewal Allocation Fund. The distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount shall reduce the distribution to the General Fund;

(d) Fourth, until July 1, 2009, the State Treasurer shall place in the Municipal Infrastructure Redevelopment Fund the sum of five hundred twenty thousand dollars each fiscal year to carry out the Municipal Infrastructure Redevelopment Fund Act. The Legislature shall appropriate the sum of five hundred twenty thousand dollars each year for fiscal year 2003-04 through fiscal year 2008-09;

(e) Fifth, beginning July 1, 2001, and continuing until June 30, 2008, the State Treasurer shall place the equivalent of two cents of such tax in the Information Technology Infrastructure Fund. The distribution under this subdivision shall not be less than two million fifty thousand dollars. Any money needed to increase the amount distributed under this subdivision to two million fifty thousand dollars shall reduce the distribution to the General Fund;

(f) Sixth, beginning July 1, 2001, and continuing until June 30, 2016, the State Treasurer shall place one million dollars each fiscal year in the City of the Primary Class Development Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to subsection (2) of this section by such amount required to fulfill the one million dollars to be distributed pursuant to this subdivision;

(g) Seventh, beginning July 1, 2001, and continuing until June 30, 2016, the State Treasurer shall place one million five hundred thousand dollars each fiscal year in the City of the Metropolitan Class Development Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to subsection (2) of this section by

such amount required to fulfill the one million five hundred thousand dollars to be distributed pursuant to this subdivision; and

(h) Eighth, beginning July 1, 2008, and continuing until June 30, 2009, the State Treasurer shall place the equivalent of two million fifty thousand dollars of such tax in the Nebraska Public Safety Communication System Cash Fund. Beginning July 1, 2009, and continuing until June 30, 2016, the State Treasurer shall place the equivalent of two million five hundred seventy thousand dollars of such tax in the Nebraska Public Safety Communication System Cash Fund. Beginning July 1, 2016, and every fiscal year thereafter, the State Treasurer shall place the equivalent of five million seventy thousand dollars of such tax in the Nebraska Public Safety Communication System Cash Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to subsection (2) of this section by such amount required to fulfill the distribution pursuant to this subdivision.

(4) If, after distributing the proceeds of such tax pursuant to subsections (2) and (3) of this section, any proceeds of such tax remain, the State Treasurer shall place such remainder in the Nebraska Capital Construction Fund.

(5) The Legislature hereby finds and determines that the projects funded from the Municipal Infrastructure Redevelopment Fund and the Building Renewal Allocation Fund are of critical importance to the State of Nebraska. It is the intent of the Legislature that the allocations and appropriations made by the Legislature to such funds or, in the case of allocations for the Municipal Infrastructure Redevelopment Fund, to the particular municipality's account not be reduced until all contracts and securities relating to the construction and financing of the projects or portions of the projects funded from such funds or accounts of such funds are completed or paid or, in the case of the Municipal Infrastructure Redevelopment Fund, the earlier of such date or July 1, 2009, and that until such time any reductions in the cigarette tax rate made by the Legislature shall be simultaneously accompanied by equivalent reductions in the amount dedicated to the General Fund from cigarette tax revenue. Any provision made by the Legislature for distribution of the proceeds of the cigarette tax for projects or programs other than those to (a) the General Fund, (b) the Nebraska Outdoor Recreation Development Cash Fund, (c) the Health and Human Services Cash Fund, (d) the Municipal Infrastructure Redevelopment Fund, (e) the Building Renewal Allocation Fund, (f) the Information Technology Infrastructure Fund, (g) the City of the Primary Class Development Fund, (h) the City of the Metropolitan Class Development Fund, and (i) the Nebraska Public Safety Communication System Cash Fund shall not be made a higher priority than or an equal priority to any of the programs or projects specified in subdivisions (a) through (i) of this subsection.

Source: Laws 1947, c. 267, § 2, p. 861; Laws 1957, c. 341, § 1, p. 1179; Laws 1963, c. 457, § 1, p. 1483; Laws 1965, c. 501, § 2, p. 1595; Laws 1965, c. 500, § 1, p. 1590; Laws 1969, c. 645, § 10, p. 2562; Laws 1971, LB 87, § 1; Laws 1972, LB 1433, § 1; Laws 1973, LB 447, § 5; Laws 1974, LB 945, § 9; Laws 1975, Spec. Sess., LB 6, § 67; Laws 1976, LB 1004, § 24; Laws 1976, LB 1006, § 6; Laws 1978, LB 109, § 3; Laws 1981, LB 506, § 5; Laws 1982, LB 753, § 1; Laws 1983, LB 192, § 1; Laws 1983, LB 410, § 1; Laws 1983, LB 469, § 4; Laws 1984, LB 862, § 1; Laws 1985, LB 728, § 1; Laws 1985, LB 653A, § 1; Laws 1985, Second Spec. Sess., LB 3, § 1; Laws 1986, LB 258, § 16; Laws 1986, LB 842, § 1; Laws 1987, LB 730, § 27; Laws 1987, LB 218, § 1; Laws 1989, LB 683, § 1; Laws 1990, LB 1220, § 1; Laws 1991, LB 703, § 65; Laws 1992, Third Spec. Sess., LB 9, § 1; Laws 1992, Third Spec. Sess., LB 11, § 1; Laws 1993, LB 22, § 1; Laws 1993, LB 595, § 2; Laws 1994, LB 961, § 8; Laws 1996, LB 1044, § 795; Laws 1996, LB 1190, § 15; Laws 1998, LB 1107, § 2; Laws 1999, LB 683, § 1; Laws 2000, LB 1349, § 1; Laws 2001, LB 657, § 5; Laws 2002, LB 1085, § 1; Laws 2003, LB 440, § 2; Laws 2003, LB 759, § 3; Laws 2005, LB 426, § 15; Laws 2007, LB296, § 703; Laws 2007, LB322, § 20.
Operative date July 1, 2007.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 703, with LB 322, section 20, to reflect all amendments.

Cross Reference

Deferred Building Renewal Act, see section 81-190.

Municipal Infrastructure Redevelopment Fund Act, see section 18-2601.

Task Force for Building Renewal, see section 81-174.

ARTICLE 27

SALES AND INCOME TAX

(a) ACT, RATES, AND DEFINITIONS

Section.

- 77-2701. Act, how cited.
- 77-2701.04. Definitions, where found.
- 77-2701.10. Contractor or repairperson, defined.
- 77-2701.16. Gross receipts, defined.
- 77-2701.34. Sale for resale, defined.
- 77-2701.35. Sales price, defined.
- 77-2701.45. Repealed. Laws 2007, LB 367, § 31.
- 77-2701.48. Bundled transaction, defined.

(b) SALES AND USE TAX

- 77-2703. Sales and use tax; rate; collection; understatement; violation; penalty; interest.
- 77-2703.01. General sourcing rules.
- 77-2703.02. Repealed. Laws 2007, LB 223, § 36.
- 77-2703.04. Telecommunications sourcing rule.
- 77-2704.09. Insulin; prescription medicines; medical equipment; exemptions.
- 77-2704.21. Purchase of motor vehicle for disabled person; exemption.
- 77-2704.33. Fixed-price contract; change in sales tax rate; refund of tax; failure to pay tax; penalty.
- 77-2704.55. Certain contractor labor; refund; procedure; Department of Revenue Contractor Enforcement Fund; created; investment.

- 77-2704.57. Personal property used in C-BED project or community-based energy development project; exemption.
- 77-2709.01. Repealed. Laws 2007, LB 367, § 31.
- 77-2711. Sales and use tax; Tax Commissioner; enforcement; records; retain; reports; wrongful disclosures; exceptions; information provided to municipality; penalty; waiver; streamlined sales and use tax agreement; confidentiality rights.
- 77-2712.03. Streamlined sales and use tax agreement; ratified; governing board; members.
- 77-2712.05. Streamlined sales and use tax agreement; requirements.

(c) INCOME TAX

- 77-2715.02. Rate schedules; established; other taxes; tax rate; tax tables.
- 77-2715.07. Income tax credits.
- 77-2715.08. Capital gains; terms, defined.
- 77-2715.09. Capital stock; sale or exchange; extraordinary dividend and capital gains treatment.
- 77-2716. Income tax; adjustments.
- 77-2716.01. Personal exemptions; standard deduction; computation.
- 77-2717. Income tax; estates; trusts; rate; fiduciary return; contents; filing; state income tax; contents; credits.
- 77-2734.03. Income tax; tax credits.
- 77-2753. Income tax; withholding from wages and other payments.
- 77-2756. Income tax; employer or payor; withholding for tax.
- 77-2790. Income tax; deficiency; interest; failure to report or file; prohibited acts; penalties.
- 77-27,119.01. Income tax form; contribution to Wildlife Conservation Fund.

(d) GENERAL PROVISIONS

- 77-27,131. Tax Commissioner; security required; when; sale of security; notice.
- 77-27,132. Revenue Distribution Fund; created; use; collections under act; disposition.

(g) LOCAL OPTION REVENUE ACT

- 77-27,144. Municipalities; sales and use tax; Tax Commissioner; collection; distribution.

(j) SETOFF FOR CHILD, SPOUSAL, AND MEDICAL SUPPORT DEBTS

- 77-27,162. Collection system; development; duties.

(m) NEBRASKA ADVANTAGE RURAL DEVELOPMENT ACT

- 77-27,187.01. Terms, defined.
- 77-27,187.02. Application; contents; fee; Nebraska Advantage Rural Development Fund; created; use; investment; written agreement; contents.
- 77-27,188. Tax credit; allowed; when; amount; repayment.
- 77-27,189. Qualified business, defined.
- 77-27,190. Employment expansion; how determined.
- 77-27,192. Existing business acquisition, disposal, reorganization, or relocation; computation; certain transactions excluded.
- 77-27,194. Credit; when transferable.

- 77-27,222. (p) CREDIT FOR BUSINESS CHILD CARE EXPENDITURES
Repealed. Laws 2007, LB 367, § 30.
- 77-27,235. (s) RENEWABLE ENERGY TAX CREDIT
Renewable energy tax credit; Department of Revenue; Environmental Quality Council; powers.
- 77-27,236. (t) BIODIESEL FACILITY INVESTMENT CREDIT
Biodiesel facility tax credit; conditions; facility; requirements; information not public record.

(a) ACT, RATES, AND DEFINITIONS

77-2701 Act, how cited. Sections 77-2701 to 77-27,135.01 and 77-27,228 to 77-27,236 shall be known and may be cited as the Nebraska Revenue Act of 1967.

Source: Laws 1967, c. 487, § 1, p. 1533; Laws 1984, LB 1124, § 2; Laws 1985, LB 715, § 1; Laws 1985, LB 273, § 40; Laws 1987, LB 773, § 1; Laws 1987, LB 772, § 1; Laws 1987, LB 775, § 14; Laws 1987, LB 523, § 12; Laws 1989, LB 714, § 1; Laws 1989, LB 762, § 9; Laws 1991, LB 444, § 1; Laws 1991, LB 773, § 6; Laws 1991, LB 829, § 19; Laws 1992, LB 871, § 3; Laws 1992, LB 1063, § 180; Laws 1992, Second Spec. Sess., LB 1, § 153; Laws 1992, Fourth Spec. Sess., LB 1, § 22; Laws 1993, LB 138, § 69; Laws 1993, LB 240, § 1; Laws 1993, LB 345, § 14; Laws 1993, LB 587, § 20; Laws 1993, LB 815, § 22; Laws 1994, LB 901, § 1; Laws 1994, LB 938, § 1; Laws 1995, LB 430, § 2; Laws 1996, LB 106, § 2; Laws 1997, LB 182A, § 1; Laws 1998, LB 924, § 27; Laws 2001, LB 172, § 10; Laws 2001, LB 433, § 2; Laws 2002, LB 57, § 2; Laws 2002, LB 947, § 3; Laws 2003, LB 72, § 1; Laws 2003, LB 168, § 1; Laws 2003, LB 282, § 6; Laws 2003, LB 759, § 4; Laws 2004, LB 1017, § 2; Laws 2005, LB 28, § 1; Laws 2005, LB 312, § 6; Laws 2006, LB 872, § 1; Laws 2006, LB 968, § 3; Laws 2006, LB 1189, § 1; Laws 2007, LB223, § 3; Laws 2007, LB343, § 1; Laws 2007, LB367, § 9.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 223, section 3, with LB 343, section 1, and LB 367, section 9, to reflect all amendments.

Note: The changes made by LB 343 became operative for taxable years beginning or deemed to begin on or after January 1, 2007, under the Internal Revenue Code of 1986, as amended. The changes made by LB 367 became operative October 1, 2007. The changes made by LB 223 became operative January 1, 2008.

77-2701.04 Definitions, where found. For purposes of sections 77-2701.04 to 77-2713, unless the context otherwise requires, the definitions found in sections 77-2701.05 to 77-2701.48 shall be used.

Source: Laws 1992, LB 871, § 4; Laws 1992, Fourth Spec. Sess., LB 1, § 23; Laws 1993, LB 345, § 15; Laws 1998, LB 924, § 28; R.S.Supp.,2002, § 77-2702.03; Laws 2003, LB 282, § 8; Laws 2003, LB 759, § 6; Laws 2004, LB 1017, § 3; Laws 2005, LB 312, § 7; Laws 2006, LB 968, § 4; Laws 2006, LB 1189, § 2; Laws 2007, LB223, § 4; Laws 2007, LB367, § 10.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 223, section 4, with LB 367, section 10, to reflect all amendments.

Note: The changes made by LB 367 became operative October 1, 2007. The changes made by LB 223 became operative January 1, 2008.

77-2701.10 Contractor or repairperson, defined. Contractor or repairperson means any person who performs any repair services upon property annexed to, or who annexes building materials to, real estate, including leased property, and who, as a necessary and incidental part of performing such services, annexes building materials to the real estate

being so repaired or annexed or arranges for such annexation. Contractor or repairperson does not include any person who incorporates live plants into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate. The contractor or repairperson not electing to be taxed as a retailer is considered to be the consumer of such building materials furnished by him or her and annexed to the real estate being so repaired or annexed for all the purposes of the Nebraska Revenue Act of 1967. The contractor or repairperson:

(1) Shall be permitted to make an election that he or she will be taxed as a retailer in which case he or she shall not be considered the final consumer of building materials annexed to real estate;

(2) Shall be permitted to make an election that he or she will be taxed as the consumer of building materials annexed to real estate, will pay the sales tax or remit the use tax at the time of purchase, and will maintain a tax-paid inventory; or

(3) Shall be permitted to make an election that he or she will be taxed as the consumer of building materials annexed to real estate and may issue a resale certificate when purchasing building materials that will be annexed to real estate. Such person shall then remit the appropriate use tax on any building materials when withdrawn from inventory for the purpose of being annexed to real estate at the rate in effect at the time and place of the withdrawal from inventory.

The provisions of this section shall not excuse any person from the obligation to collect sales tax on retail sales of property not annexed to real estate or from the obligation to pay the sales tax or remit the use tax on tools, services, and other materials consumed that are not annexed to real estate.

The Department of Revenue shall not prescribe any requirements of Nebraska sales revenue, percentage or otherwise, restricting any person's election. Any change in an election shall require prior approval by the Tax Commissioner.

Any change in the election shall, if filed on or prior to the fifteenth of the month, become effective at the beginning of the following month or, if filed after the fifteenth of the month, become effective on the first day of the next succeeding month. Any person who changes his or her election and becomes a contractor or repairperson shall pay the tax on all building materials in inventory which may be annexed to real estate at the time of making the change in election except when such contractor or repairperson elects to purchase inventory with a resale certificate. Any person who changes his or her election and becomes a retailer shall not be entitled to a refund but shall receive a credit for the tax paid on building materials in inventory at the time the building materials are sold. The credit shall be applied against the tax collected on sales of such building materials.

Any contractor or repairperson who has not completed and filed an election as required in this section within three months after beginning to operate as a contractor or repairperson shall be considered a retailer for all periods until an election has been made.

Source: Laws 1992, LB 871, § 6; Laws 1993, LB 345, § 16; R.S.1943, (1996), § 77-2702.05; Laws 2003, LB 282, § 14; Laws 2003, LB 759, § 7; Laws 2004, LB 1017, § 6; Laws 2007, LB367, § 12.
Operative date October 1, 2007.

77-2701.16 Gross receipts, defined. (1) Gross receipts shall mean the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers valued in money whether received in money or otherwise, without any deduction on account of any of the following:

(a) The cost of property sold. In accordance with rules and regulations adopted and promulgated by the Tax Commissioner, a deduction may be taken if the retailer has purchased property for some purpose other than resale, has reimbursed his or her vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his or her vendor with respect to the sale of the property;

(b) The cost of the materials used, labor or service costs, interest paid, losses, or any other expense;

(c) The cost of transportation of the property;

(d) The amount of any excise or property tax levied against the property except as otherwise provided in the Nebraska Revenue Act of 1967; or

(e) The amount charged for warranties, guarantees, or maintenance agreements.

(2) Gross receipts of every person engaged as a public utility specified in this subsection or as a community antenna television service operator or any person involved in connecting and installing services defined in subdivision (2)(a), (b), or (d) of this section shall mean:

(a) In the furnishing of telephone communication service, other than mobile telecommunications service as described in section 77-2706.02, the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service. In the furnishing of mobile telecommunications service as described in section 77-2706.02, the gross income received from furnishing mobile telecommunications service that originates and terminates in the same state to a customer with a place of primary use in Nebraska. Gross receipts shall not mean (i) the gross income, including division of revenue, settlements, or carrier access charges received on or after January 1, 1984, from the sale of a telephone communication service to a communication service provider for purposes of furnishing telephone communication service or (ii) the gross income attributable to services rendered using a prepaid telephone calling arrangement. For purposes of this subdivision, a prepaid telephone calling arrangement shall mean the right to exclusively purchase telecommunications service that is paid for in advance that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed;

(b) In the furnishing of telegraph service, the gross income received from the furnishing of intrastate telegraph services;

(c) In the furnishing of gas, electricity, sewer, and water service except water used for irrigation of agricultural lands and manufacturing purposes, the gross income received from the furnishing of such services upon billings or statements rendered to consumers for such utility services; and

(d) In the furnishing of community antenna television service, the gross income received from the furnishing of such community antenna television service as regulated under sections 18-2201 to 18-2205 or 23-383 to 23-388.

Gross receipts shall also mean gross income received from the provision, installation, construction, servicing, or removal of property used in conjunction with the furnishing, installing, or connecting of any public utility services specified in subdivision (2)(a) or (b) of this section or community antenna television service specified in subdivision (2)(d) of this section. Gross receipts shall not mean gross income received from telephone directory advertising.

(3) Gross receipts of every person engaged in selling, leasing, or otherwise providing intellectual or entertainment property shall mean:

(a) In the furnishing of computer software, the gross income received, including the charges for coding, punching, or otherwise producing computer software and the charges for the tapes, disks, punched cards, or other properties furnished by the seller; and

(b) In the furnishing of videotapes, movie film, satellite programming, satellite programming service, and satellite television signal descrambling or decoding devices, the gross income received from the license, franchise, or other method establishing the charge except the gross income received from videotape and film rentals, satellite programming, and satellite programming service when the sales tax or the admission tax is charged under the Nebraska Revenue Act of 1967 and except as provided in section 77-2704.39.

(4) Gross receipts for providing a service shall mean:

(a) The gross income received for building cleaning and maintenance, pest control, and security;

(b) The gross income received for motor vehicle washing, waxing, towing, and painting;

(c) The gross income received for computer software training;

(d) The gross income received for installing and applying tangible personal property if the sale of the property is subject to tax;

(e) The gross income received for labor by a contractor except as provided in section 77-2704.55;

(f) The gross income received for services of recreational vehicle parks;

(g) The gross income received for labor for repair or maintenance services performed with regard to tangible personal property the sale of which would be subject to sales and use taxes, excluding motor vehicles, except as otherwise provided in subdivision (2)(f) of section 77-2702.13 or section 77-2704.26;

(h) The gross income received for animal specialty services except (i) veterinary services and (ii) specialty services performed on livestock as defined in section 54-183; and

- (i) The gross income received for detective services.
- (5) Gross receipts shall not include any of the following:
 - (a) Cash discounts allowed and taken on sales;
 - (b) The amount of any rebate granted by a motor vehicle or motorboat manufacturer or dealer at the time of sale of the motor vehicle or motorboat, which rebate functions as a discount from the sales price of the motor vehicle or motorboat;
 - (c) Sales price of property or services returned or rejected by customers when the full sales price is refunded either in cash or credit;
 - (d) The amount charged for finance charges, carrying charges, service charges, or interest from credit extended on sales of property or services under contracts providing for deferred payments of the purchase price if such charges are not used as a means of avoiding imposition of the tax upon the actual sales price of the property or services;
 - (e) The value of property taken by a seller in trade as all or a part of the consideration for a sale of property of any kind or nature;
 - (f) The value of a motor vehicle or motorboat taken by any person in trade as all or a part of the consideration for a sale of another motor vehicle or motorboat;
 - (g) Receipts from conditional sale contracts, installment sale contracts, rentals, and leases executed in writing prior to June 1, 1967, and with delivery of the property prior to June 1, 1967, if such conditional sale contracts, installment sale contracts, rentals, or leases are for a fixed price and are not subject to negotiation or alteration; or
 - (h) Except as provided in subsection (2) of this section, until October 1, 2002, the amount charged for labor or services rendered in installing or applying the property sold if such amount is separately stated and such separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the property.
- (6) Subsections (1) through (6) of this section terminate on January 1, 2004.
- (7) Gross receipts means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers.
- (8) Gross receipts of every person engaged as a public utility specified in this subsection or as a community antenna television service operator or any person involved in connecting and installing services defined in subdivision (8)(a), (b), or (d) of this section means:
 - (a)(i) In the furnishing of telephone communication service, other than mobile telecommunications service as described in section 77-2703.04, the gross income received from furnishing local exchange telephone service and intrastate message toll telephone service; and
 - (ii) In the furnishing of mobile telecommunications service as described in section 77-2703.04, the gross income received from furnishing mobile telecommunications service that originates and terminates in the same state to a customer with a place of primary use in Nebraska;
 - (b) In the furnishing of telegraph service, the gross income received from the furnishing of intrastate telegraph services;

(c) In the furnishing of gas, electricity, sewer, and water service, the gross income received from the furnishing of such services upon billings or statements rendered to consumers for such utility services;

(d) In the furnishing of community antenna television service, the gross income received from the furnishing of such community antenna television service as regulated under sections 18-2201 to 18-2205 or 23-383 to 23-388; and

(e) The gross income received from the provision, installation, construction, servicing, or removal of property used in conjunction with the furnishing, installing, or connecting of any public utility services specified in subdivision (8)(a) or (b) of this section or community antenna television service specified in subdivision (8)(d) of this section, except when acting as a subcontractor for a public utility, this subdivision does not apply to the gross income received by a contractor electing to be treated as a consumer of building materials under subdivision (2) or (3) of section 77-2701.10 for any such services performed on the customer's side of the utility demarcation point.

(9) Gross receipts of every person engaged in selling, leasing, or otherwise providing intellectual or entertainment property means:

(a) In the furnishing of computer software, the gross income received, including the charges for coding, punching, or otherwise producing any computer software and the charges for the tapes, disks, punched cards, or other properties furnished by the seller; and

(b) In the furnishing of videotapes, movie film, satellite programming, satellite programming service, and satellite television signal descrambling or decoding devices, the gross income received from the license, franchise, or other method establishing the charge.

(10) Gross receipts for providing a service means:

(a) The gross income received for building cleaning and maintenance, pest control, and security;

(b) The gross income received for motor vehicle washing, waxing, towing, and painting;

(c) The gross income received for computer software training;

(d) The gross income received for installing and applying tangible personal property if the sale of the property is subject to tax;

(e) The gross income received for services of recreational vehicle parks;

(f) The gross income received for labor for repair or maintenance services performed with regard to tangible personal property the sale of which would be subject to sales and use taxes, excluding motor vehicles, except as otherwise provided in section 77-2704.26 or 77-2704.50;

(g) The gross income received for animal specialty services except (i) veterinary services and (ii) specialty services performed on livestock as defined in section 54-183; and

(h) The gross income received for detective services.

(11) Gross receipts includes the sale of admissions which means the right or privilege to have access to or to use a place or location. An admission includes a membership that allows access to or use of a place or location, but which membership does not include the right to hold office, vote, or change the policies of the organization. When an admission to an

activity or a membership constituting an admission pursuant to this subsection is combined with the solicitation of a contribution, the portion or the amount charged representing the fair market price of the admission shall be considered a retail sale subject to the tax imposed by section 77-2703. The organization conducting the activity shall determine the amount properly attributable to the purchase of the privilege, benefit, or other consideration in advance, and such amount shall be clearly indicated on any ticket, receipt, or other evidence issued in connection with the payment.

(12) Gross receipts includes the sale of live plants incorporated into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate.

(13) Gross receipts includes the sale of any building materials annexed to real estate by a person electing to be taxed as a retailer pursuant to subdivision (1) of section 77-2701.10.

(14) Gross receipts includes the sale of prepaid telephone calling arrangements and the recharge of prepaid telephone calling arrangements. If the sale or recharge of a prepaid telephone calling arrangement does not take place at the vendor's place of business, the sale or recharge shall be conclusively determined to take place at the customer's shipping address or, if there is no item shipped, at the customer's billing address. For purposes of this subsection, a prepaid telephone calling arrangement means the right to exclusively purchase telecommunications services that are paid for in advance that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed.

(15) Gross receipts does not include:

(a) The amount of any rebate granted by a motor vehicle or motorboat manufacturer or dealer at the time of sale of the motor vehicle or motorboat, which rebate functions as a discount from the sales price of the motor vehicle or motorboat; or

(b) The price of property or services returned or rejected by customers when the full sales price is refunded either in cash or credit.

(16) Subsections (7) through (15) of this section become operative on January 1, 2004.

(17) The Tax Commissioner shall hold a hearing on rules and regulations to carry out the changes made to this section by Laws 2003, LB 759. It is the intent of the Legislature that the Tax Commissioner adopt and promulgate rules and regulations to carry out such changes.

Source: Laws 1992, LB 871, § 8; Laws 1993, LB 345, § 18; Laws 1994, LB 123, § 21; Laws 1994, LB 901, § 2; Laws 1994, LB 977, § 1; Laws 1994, LB 1087, § 1; Laws 1996, LB 106, § 3; Laws 1999, LB 214, § 1; Laws 2002, LB 947, § 4; Laws 2002, LB 1085, § 3; R.S.Supp., 2002, § 77-2702.07; Laws 2003, LB 282, § 20; Laws 2003, LB 759, § 8; Laws 2004, LB 1017, § 7; Laws 2005, LB 216, § 4; Laws 2005, LB 753, § 1; Laws 2007, LB367, § 13.
Operative date October 1, 2007.

77-2701.34 Sale for resale, defined. Sale for resale means a sale of property or provision of a service to any purchaser who is purchasing such property or service for the purpose of reselling it in the normal course of his or her business, either in the form or condition in which it is purchased or as an attachment to or integral part of other property or service. A sale for resale includes a sale of building materials to a contractor or repairperson electing to be taxed as a retailer under subdivision (1) of section 77-2701.10, a sale of building

materials to a contractor or repairperson being taxed as the consumer of building materials and electing a tax-free inventory under subdivision (3) of section 77-2701.10, or a sale of property to a purchaser for the sole purpose of that purchaser renting or leasing such property to another person, with rent or lease payments set at a fair market value, or film rentals for use in a place where an admission is charged that is subject to tax under the Nebraska Revenue Act of 1967 but not if incidental to the renting or leasing of real estate.

Source: Laws 1992, LB 871, § 17; Laws 1993, LB 345, § 25; Laws 2002, LB 1085, § 9; R.S.Supp.,2002, § 77-2702.16; Laws 2003, LB 282, § 38; Laws 2004, LB 1017, § 8; Laws 2007, LB367, § 14. Operative date October 1, 2007.

77-2701.35 Sales price, defined. (1) Sales price applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

- (a) The seller's cost of the property sold;
 - (b) The cost of materials used, the cost of labor or service, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
 - (c) Charges by the seller for any services necessary to complete the sale;
 - (d) Delivery charges; and
 - (e) Installation charges.
- (2) Sales price includes consideration received by the seller from third parties if:
- (a) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;
 - (b) The seller has an obligation to pass the price reduction or discount through to the purchaser;
 - (c) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and
 - (d) One of the following criteria is met:
 - (i) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount when the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;
 - (ii) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount. A preferred customer card that is available to any patron does not constitute membership in such a group; or
 - (iii) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.
- (3) Sales price does not include:
- (a) Any discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(b) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(c) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(d) Credit for any trade-in as follows:

(i) The value of property taken by a seller in trade as all or a part of the consideration for a sale of property of any kind or nature; or

(ii) The value of a motor vehicle or motorboat taken by any person in trade as all or a part of the consideration for a sale of another motor vehicle or motorboat.

Source: Laws 2003, LB 282, § 39; Laws 2007, LB223, § 6.
Operative date January 1, 2008.

77-2701.45 Repealed. Laws 2007, LB 367, § 31.
Operative date October 1, 2007.

77-2701.48 Bundled transaction, defined. (1) Bundled transaction means the retail sale of two or more products, except real property and services to real property, when (a) the products are otherwise distinct and identifiable and (b) the products are sold for one non-itemized price. Bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(2) Distinct and identifiable products do not include:

(a) Packaging, such as containers, boxes, sacks, bags, and bottles or other materials such as wrapping, labels, tags, and instruction guides that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags, and express delivery envelopes and boxes;

(b) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge; and

(c) Items included in the definition of sales price pursuant to section 77-2701.35.

(3) One non-itemized price does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form, including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(4) A transaction that otherwise meets the definition of a bundled transaction is not a bundled transaction if it is (a) the retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service, (b) the retail sale of services when one service is provided that is essential to the use or receipt of

a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service, or (c) a transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimus. De minimus means the seller's purchase price or sales price of the taxable products is ten percent or less of the total purchase price or sales price of the bundled products. Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimus. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimus. Sellers shall use the full term of a service contract to determine if the taxable products are de minimus.

(5) Bundled transaction does not include the retail sale of exempt tangible personal property and taxable tangible personal property if (a) the transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices, or medical supplies and (b) the seller's purchase price or sales price of the taxable tangible personal property is fifty percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty-percent determination for a transaction.

Source: Laws 2007, LB223, § 5.
Operative date January 1, 2008.

(b) SALES AND USE TAX

77-2703 Sales and use tax; rate; collection; understatement; violation; penalty; interest. (1) There is hereby imposed a tax at the rate provided in section 77-2701.02 upon the gross receipts from all sales of tangible personal property sold at retail in this state; the gross receipts of every person engaged as a public utility, as a community antenna television service operator or any person involved in the connecting and installing of the services defined in subdivision (8)(a), (b), (d), or (e) of section 77-2701.16, or as a retailer of intellectual or entertainment properties referred to in subsection (9) of section 77-2701.16; the gross receipts from the sale of admissions in this state; the gross receipts from the sale of warranties, guarantees, service agreements, or maintenance agreements when the items covered are subject to tax under this section; beginning January 1, 2008, the gross receipts from the sale of bundled transactions when one or more of the products included in the bundle are taxable; and the gross receipts from the provision of services defined in subsection (10) of section 77-2701.16. Except as provided in section 77-2701.03, when there is a sale, the tax shall be imposed at the rate in effect at the time the gross receipts are realized under the accounting basis used by the retailer to maintain his or her books and records.

(a) The tax imposed by this section shall be collected by the retailer from the consumer. It shall constitute a part of the purchase price and until collected shall be a debt from the consumer to the retailer and shall be recoverable at law in the same manner as other debts.

The tax required to be collected by the retailer from the consumer constitutes a debt owed by the retailer to this state.

(b) It is unlawful for any retailer to advertise, hold out, or state to the public or to any customer, directly or indirectly, that the tax or part thereof will be assumed or absorbed by the retailer, that it will not be added to the selling, renting, or leasing price of the property sold, rented, or leased, or that, if added, it or any part thereof will be refunded. The provisions of this subdivision shall not apply to a public utility.

(c) The tax required to be collected by the retailer from the purchaser, unless otherwise provided by statute or by rule and regulation of the Tax Commissioner, shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales, rentals, or leases.

(d) For the purpose of more efficiently securing the payment, collection, and accounting for the sales tax and for the convenience of the retailer in collecting the sales tax, it shall be the duty of the Tax Commissioner to provide a schedule or schedules of the amounts to be collected from the consumer or user to effectuate the computation and collection of the tax imposed by the Nebraska Revenue Act of 1967. Such schedule or schedules shall provide that the tax shall be collected from the consumer or user uniformly on sales according to brackets based on sales prices of the item or items. Retailers may compute the tax due on any transaction on an item or an invoice basis. The rounding rule provided in section 77-3,117 applies.

(e) The use of tokens or stamps for the purpose of collecting or enforcing the collection of the taxes imposed in the Nebraska Revenue Act of 1967 or for any other purpose in connection with such taxes is prohibited.

(f) For the purpose of the proper administration of the provisions of the Nebraska Revenue Act of 1967 and to prevent evasion of the retail sales tax, it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of property is not a sale at retail is upon the person who makes the sale unless he or she takes from the purchaser (i) a resale certificate to the effect that the property is purchased for the purpose of reselling, leasing, or renting it, (ii) an exemption certificate pursuant to subsection (7) of section 77-2705, or (iii) a direct payment permit pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale certificate, exemption certificate, or direct payment permit shall be conclusive proof for the seller that the sale was made for resale or was exempt or that the tax will be paid directly to the state.

(g) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in the Motor Vehicle Registration Act, the tax shall be collected by the lessor on the rental or lease price at the tax rate in effect on the date the automobile, truck, trailer, semitrailer, or truck-tractor is delivered to the lessee, except as otherwise provided within this section.

(h) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in the act, for periods of one year or more, the lessor may elect not to collect and remit

the sales tax on the gross receipts and instead pay a sales tax on the cost of such vehicle. If such election is made, it shall be made pursuant to the following conditions:

(i) Notice of the desire to make such election shall be filed with the Tax Commissioner and shall not become effective until the Tax Commissioner is satisfied that the taxpayer has complied with all conditions of this subsection and all rules and regulations of the Tax Commissioner;

(ii) Such election when made shall continue in force and effect for a period of not less than two years and thereafter until such time as the lessor elects to terminate the election;

(iii) When such election is made, it shall apply to all vehicles of the lessor rented or leased for periods of one year or more except vehicles to be leased to common or contract carriers who provide to the lessor a valid common or contract carrier exemption certificate. If the lessor rents or leases other vehicles for periods of less than one year, such lessor shall maintain his or her books and records and his or her accounting procedure as the Tax Commissioner prescribes; and

(iv) The Tax Commissioner by rule and regulation shall prescribe the contents and form of the notice of election, a procedure for the determination of the tax base of vehicles which are under an existing lease at the time such election becomes effective, the method and manner for terminating such election, and such other rules and regulations as may be necessary for the proper administration of this subdivision.

(i) The tax imposed by this section on the sales of motor vehicles, semitrailers, and trailers as defined in sections 60-339, 60-348, and 60-354 shall be the liability of the purchaser and, with the exception of motor vehicles, semitrailers, and trailers registered pursuant to section 60-3,198, the tax shall be collected by the county treasurer or designated county official as provided in the Motor Vehicle Registration Act at the time the purchaser makes application for the registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state. The tax imposed by this section on motor vehicles, semitrailers, and trailers registered pursuant to section 60-3,198 shall be collected by the Department of Motor Vehicles at the time the purchaser makes application for the registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state. At the time of the sale of any motor vehicle, semitrailer, or trailer, the seller shall (i) state on the sales invoice the dollar amount of the tax imposed under this section and (ii) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If

the seller fails to state on the sales invoice the dollar amount of the tax due, the purchaser shall have the right and authority to rescind any agreement for purchase and to declare the purchase null and void. If the purchaser retains such motor vehicle, semitrailer, or trailer in this state and does not register it for operation on the highways of this state within thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer, the designated county official, or the Department of Motor Vehicles. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer, designated county official, or Department of Motor Vehicles shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act of 1967. The county treasurer, designated county official, or Department of Motor Vehicles shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer or designated county official shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax. The Department of Motor Vehicles shall deduct, withhold, and deposit in the Motor Carrier Division Cash Fund the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer, designated county official, or Department of Motor Vehicles violates any rule or regulation pertaining to the collection of the use tax.

(j)(i) The tax imposed by this section on the sale of a motorboat as defined in section 37-1204 shall be the liability of the purchaser. The tax shall be collected by the county treasurer or designated county official at the time the purchaser makes application for the registration of the motorboat. At the time of the sale of a motorboat, the seller shall (A) state on the sales invoice the dollar amount of the tax imposed under this section and (B) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the seller fails to state on the sales invoice the dollar amount of the tax due, the purchaser shall have the right and authority to rescind any agreement for purchase and to declare the purchase null and void. If the purchaser retains such motorboat in this state and does not register it within thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer or designated county official. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer or designated county official shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act

of 1967. The county treasurer or designated county official shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer or designated county official shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer or designated county official violates any rule or regulation pertaining to the collection of the use tax.

(ii) In the rental or lease of motorboats, the tax shall be collected by the lessor on the rental or lease price.

(k) The Tax Commissioner shall adopt and promulgate necessary rules and regulations for determining the amount subject to the taxes imposed by this section so as to insure that the full amount of any applicable tax is paid in cases in which a sale is made of which a part is subject to the taxes imposed by this section and a part of which is not so subject and a separate accounting is not practical or economical.

(2) A use tax is hereby imposed on the storage, use, or other consumption in this state of property purchased, leased, or rented from any retailer and on any transaction the gross receipts of which are subject to tax under subsection (1) of this section on or after June 1, 1967, for storage, use, or other consumption in this state at the rate set as provided in subsection (1) of this section on the sales price of the property or, in the case of leases or rentals, of the lease or rental prices.

(a) Every person storing, using, or otherwise consuming in this state property purchased from a retailer or leased or rented from another person for such purpose shall be liable for the use tax at the rate in effect when his or her liability for the use tax becomes certain under the accounting basis used to maintain his or her books and records. His or her liability shall not be extinguished until the use tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the Tax Commissioner, under such rules and regulations as he or she may prescribe, to collect the sales tax and who is, for the purposes of the Nebraska Revenue Act of 1967 relating to the sales tax, regarded as a retailer engaged in business in this state, which receipt is given to the purchaser pursuant to subdivision (b) of this subsection, shall be sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(b) Every retailer engaged in business in this state and selling, leasing, or renting property for storage, use, or other consumption in this state shall, at the time of making any sale, collect any tax which may be due from the purchaser and shall give to the purchaser, upon request, a receipt therefor in the manner and form prescribed by the Tax Commissioner.

(c) The Tax Commissioner, in order to facilitate the proper administration of the use tax, may designate such person or persons as he or she may deem necessary to be use tax collectors and delegate to such persons such authority as is necessary to collect any use tax which is due and payable to the State of Nebraska. The Tax Commissioner may require of all persons so designated a surety bond in favor of the State of Nebraska to insure against

any misappropriation of state funds so collected. The Tax Commissioner may require any tax official, city, county, or state, to collect the use tax on behalf of the state. All persons designated to or required to collect the use tax shall account for such collections in the manner prescribed by the Tax Commissioner. Nothing in this subdivision shall be so construed as to prevent the Tax Commissioner or his or her employees from collecting any use taxes due and payable to the State of Nebraska.

(d) All persons designated to collect the use tax and all persons required to collect the use tax shall forward the total of such collections to the Tax Commissioner at such time and in such manner as the Tax Commissioner may prescribe. For all use taxes collected prior to October 1, 2002, such collectors of the use tax shall deduct and withhold from the amount of taxes collected two and one-half percent of the first three thousand dollars remitted each month and one-half of one percent of all amounts in excess of three thousand dollars remitted each month as reimbursement for the cost of collecting the tax. For use taxes collected on and after October 1, 2002, such collectors of the use tax shall deduct and withhold from the amount of taxes collected two and one-half percent of the first three thousand dollars remitted each month as reimbursement for the cost of collecting the tax. Any such deduction shall be forfeited to the State of Nebraska if such collector violates any rule, regulation, or directive of the Tax Commissioner.

(e) For the purpose of the proper administration of the Nebraska Revenue Act of 1967 and to prevent evasion of the use tax, it shall be presumed that property sold, leased, or rented by any person for delivery in this state is sold, leased, or rented for storage, use, or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who purchases, leases, or rents the property.

(f) For the purpose of the proper administration of the Nebraska Revenue Act of 1967 and to prevent evasion of the use tax, for the sale of property to an advertising agency which purchases the property as an agent for a disclosed or undisclosed principal, the advertising agency is and remains liable for the sales and use tax on the purchase the same as if the principal had made the purchase directly.

Source: Laws 1967, c. 487, § 3, p. 1543; Laws 1967, c. 490, § 2, p. 1652; Laws 1969, c. 684, § 1, p. 2646; Laws 1969, c. 683, § 2, p. 2621; Laws 1974, LB 820, § 2; Laws 1981, LB 179, § 14; Laws 1983, LB 17, § 2; Laws 1983, LB 169, § 1; Laws 1983, LB 571, § 1; Laws 1985, LB 715, § 3; Laws 1985, LB 273, § 42; Laws 1986, LB 1027, § 204; Laws 1987, LB 224, § 28; Laws 1987, LB 523, § 14; Laws 1991, LB 239, § 1; Laws 1991, LB 47, § 7; Laws 1991, LB 829, § 21; Laws 1992, LB 871, § 25; Laws 1992, LB 1063, § 182; Laws 1992, Second Spec. Sess., LB 1, § 155; Laws 1992, Fourth Spec. Sess., LB 1, § 26; Laws 1993, LB 112, § 45; Laws 1993, LB 345, § 33; Laws 1993, LB 767, § 1; Laws 1994, LB 123, § 24; Laws 1994, LB 994, § 1; Laws 1994, LB 1207, § 15; Laws 1995, LB 17, § 1; Laws 1996, LB 1041, § 6; Laws 1996, LB 1218, § 65; Laws 1997, LB 62, § 1; Laws 1997, LB 182A, § 3; Laws 2002, LB 1085, § 11; Laws 2002, Second Spec. Sess., LB 32, § 1; Laws 2003, LB 282, § 48; Laws 2003, LB 381, § 3; Laws 2003, LB 563, § 43; Laws 2003, LB 759, § 12; Laws 2004, LB 1017, § 10; Laws 2005, LB 274, § 274; Laws 2007, LB223, § 7; Laws 2007, LB367, § 15.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 223, section 7, with LB 367, section 15, to reflect all amendments.

Note: The changes made by LB 367 became operative October 1, 2007. The changes made by LB 223 became operative January 1, 2008.

Cross Reference

Motor Vehicle Registration Act, see section 60-301.

77-2703.01 General sourcing rules. (1) The determination of whether a sale or use of property or the provision of services is in this state, in a municipality that has adopted a tax under the Local Option Revenue Act, or in a county that has adopted a tax under section 13-319 shall be governed by the sourcing rules in sections 77-2703.01 to 77-2703.04.

(2) When the property or service is received by the purchaser at a business location of the retailer, the sale is sourced to that business location.

(3) When the property or service is not received by the purchaser at a business location of the retailer, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the retailer.

(4) When subsection (2) or (3) of this section does not apply, the sale is sourced to the location indicated by an address or other information for the purchaser that is available from the business records of the retailer that are maintained in the ordinary course of the retailer's business when use of this address does not constitute bad faith.

(5) When subsection (2), (3), or (4) of this section does not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(6) When subsection (2), (3), (4), or (5) of this section does not apply, including the circumstance in which the retailer is without sufficient information to apply the rules in any such subsection, then the location will be determined by the address from which property was shipped, from which the digital good was first available for transmission by the retailer, or from which the service was provided disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(7) The lease or rental of tangible personal property, other than property identified in subsection (8) or (9) of this section, shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsections (2) through (6) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls; and

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsections (2) through (6) of this section.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease.

(8) The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment under subsection (9) of this section shall be sourced as follows:

(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations; and

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsections (2) through (6) of this section.

This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump-sum or accelerated basis or on the acquisition of property for lease.

(9) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with subsections (2) through (6) of this section. Transportation equipment means any of the following:

(a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

(b) Trucks and truck-tractors with a gross vehicle weight rating of ten thousand one pounds or greater, trailers, semitrailers, or passenger buses that are (i) registered through the International Registration Plan and (ii) operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

(c) Aircraft operated by air carriers authorized and certificated by the United States Department of Transportation or another federal authority or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and

(d) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (9)(a) through (c) of this section.

(10) For purposes of this section, receive and receipt mean taking possession of tangible personal property, making first use of services, or taking possession or making first use of digital goods, whichever comes first. The terms receive and receipt do not include possession by a shipping company on behalf of the purchaser. For purposes of sourcing detective services subject to tax under subdivision (10)(h) of section 77-2701.16, making first use of a service shall be deemed to be at the individual's residence, in the case of a customer who is an individual, or at the principal place of business, in the case of a business customer.

(11) The sale, not including lease or rental, of a motor vehicle, semitrailer, or trailer as defined in the Motor Vehicle Registration Act shall be sourced to the place of registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state.

(12) The sale or lease for one year or more of motorboats shall be sourced to the place of registration of the motorboat. The lease of motorboats for less than one year shall be sourced to the point of delivery.

Source: Laws 2003, LB 282, § 49; Laws 2003, LB 759, § 13; Laws 2004, LB 1017, § 11; Laws 2005, LB 274, § 275; Laws 2007, LB367, § 16.
Operative date October 1, 2007.

Cross Reference

Local Option Revenue Act, see section 77-27,148.

Motor Vehicle Registration Act, see section 60-301.

77-2703.02 Repealed. Laws 2007, LB 223, § 36.

77-2703.04 Telecommunications sourcing rule. (1) Except for the telecommunications service defined in subsection (3) of this section, the sale of telecommunications service sold on a call-by-call basis shall be sourced to (a) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (b) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the telecommunications service defined in subsection (3) of this section, a sale of telecommunications service sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

(3)(a) For mobile telecommunications service provided and billed to a customer by a home service provider:

(i) Notwithstanding any other provision of law or any local ordinance or resolution, such mobile telecommunications service is deemed to be provided by the customer's home service provider;

(ii) All taxable charges for such mobile telecommunications service shall be subject to tax by the state or other taxing jurisdiction in this state whose territorial limits encompass the customer's place of primary use regardless of where the mobile telecommunications service originates, terminates, or passes through; and

(iii) No taxes, charges, or fees may be imposed on a customer with a place of primary use outside this state.

(b) In accordance with the federal Mobile Telecommunications Sourcing Act, as such act existed on July 20, 2002, the Tax Commissioner may, but is not required to:

(i) Provide or contract for a tax assignment data base based upon standards identified in 4 U.S.C. 119, as such section existed on July 20, 2002, with the following conditions:

(A) If such data base is provided, a home service provider shall be held harmless for any tax that otherwise would result from any errors or omissions attributable to reliance on such data base; or

(B) If such data base is not provided, a home service provider may rely on an enhanced zip code for identifying the proper taxing jurisdictions and shall be held harmless for any tax that otherwise would result from any errors or omissions attributable to reliance on such enhanced zip code if the home service provider identified the taxing jurisdiction through the exercise of due diligence and complied with any procedures that may be adopted by the Tax Commissioner. Any such procedure shall be in accordance with 4 U.S.C. 120, as such section existed on July 20, 2002; and

(ii) Adopt procedures for correcting errors in the assignment of primary use that are consistent with 4 U.S.C. 121, as such section existed on July 20, 2002.

(c) If charges for mobile telecommunications service that are not subject to tax are aggregated with and not separately stated on the bill from charges that are subject to tax, the total charge to the customer shall be subject to tax unless the home service provider can reasonably separate charges not subject to tax using the records of the home service provider that are kept in the regular course of business.

(d) For purposes of this subsection:

(i) Customer means an individual, business, organization, or other person contracting to receive mobile telecommunications service from a home service provider. Customer does not include a reseller of mobile telecommunications service or a serving carrier under an arrangement to serve the customer outside the home service provider's service area;

(ii) Home service provider means a telecommunications company as defined in section 86-322 that has contracted with a customer to provide mobile telecommunications service;

(iii) Mobile telecommunications service means a wireless communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes (A) both one-way and two-way wireless communication services, (B) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations, whether on an individual, cooperative, or multiple basis for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (C) any personal communication service;

(iv) Place of primary use means the street address representative of where the customer's use of mobile telecommunications service primarily occurs. The place of primary use shall be the residential street address or the primary business street address of the customer and shall be within the service area of the home service provider; and

(v) Tax means the sales taxes levied under sections 13-319, 77-2703, and 77-27,142, the surcharges levied under the Enhanced Wireless 911 Services Act, the Nebraska Telecommunications Universal Service Fund Act, and the Telecommunications Relay System Act, and any other tax levied against the customer based on the amount charged to the customer. Tax does not mean an income tax, property tax, franchise tax, or any other tax levied on the home service provider that is not based on the amount charged to the customer.

(4) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either (a) the seller's telecommunications system, or (b) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(5) A sale of prepaid calling service is sourced in accordance with section 77-2703.01, except that in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the rule provided in section 77-2703.01 shall include as an option the location associated with the mobile telephone number.

(6) A sale of a private communication service is sourced as follows:

(a) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located;

(b) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located;

(c) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located; and

(d) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

(7) For purposes of this section:

(a) 800 service means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name 800, 855, 866, 877, and 888 toll-free calling, and any subsequent numbers designated by the Federal Communications Commission;

(b) 900 service means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. 900 service does not include the charge for collection services provided by the seller of the telecommunications services to the subscriber or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name 900 service, and any subsequent numbers designated by the Federal Communications Commission;

(c) Air-to-ground radiotelephone service means a radio telecommunication service, as that term is defined in 47 C.F.R. 22.99, as such regulation existed on January 1, 2007, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft;

(d) Ancillary services means services that are associated with or incidental to the provision of telecommunications services, including, but not limited to, detailed telecommunications billings, directory assistance, vertical service, and voice mail services;

(e) Call-by-call basis means any method of charging for telecommunications service where the price is measured by individual calls;

(f) Coin-operated telephone service means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate;

(g) Communications channel means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points;

(h) Conference bridging service means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge;

(i) Customer means the person or entity that contracts with the seller of telecommunications service. If the end user of telecommunications service is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service, but this sentence only applies for the purpose of sourcing sales of telecommunications service under this section. Customer does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area;

(j) Customer channel termination point means the location where the customer either inputs or receives the communications;

(k) Detailed telecommunications billing service means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement;

(l) Directory assistance means an ancillary service of providing telephone number information and address information;

(m) End user means the person who utilizes the telecommunications service. In the case of an entity, end user means the individual who utilizes the service on behalf of the entity;

(n) Fixed wireless service means a telecommunications service that provides radio communication between fixed points;

(o) International means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a United States territory or possession;

(p) Interstate means a telecommunications service that originates in one state of the United States, or a territory or possession of the United States, and terminates in a different state, territory, or possession of the United States;

(q) Intrastate means a telecommunications service that originates in one state of the United States, or a territory or possession of the United States, and terminates in the same state, territory, or possession of the United States;

(r) Mobile wireless service means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and

termination points of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider;

(s) Paging service means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers. Such transmission may include messages and sounds;

(t) Pay telephone services means a telecommunications service provided through pay telephones;

(u) Post-paid calling service means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism, such as a bank card, travel card, credit card, or debit card, or by a charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service;

(v) Prepaid calling service means the right to access exclusively telecommunications service, which is paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount;

(w) Prepaid wireless calling service means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance, that is sold in predetermined units of dollars or which the number declines with use in a known amount;

(x) Private communication service means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels;

(y) Residential telecommunications service means a telecommunications service or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunications service is considered residential if it is provided to and paid for by an individual resident rather than the institution;

(z) Service address means the location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid. If this location is not known, service address means the origination point of the signal of the telecommunications service first identified either by the seller's telecommunications system, or in information received by the seller from its service provider,

where the system used to transport such signals is not that of the seller. If both locations are not known, the service address means the location of the customer's place of primary use;

(aa) Telecommunications service means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. Telecommunications service includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value-added. Telecommunications service does not include:

(i) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser when such purchaser's primary purpose for the underlying transaction is the processed data or information;

(ii) Installation or maintenance of wiring or equipment on a customer's premises;

(iii) Tangible personal property;

(iv) Advertising, including, but not limited to, directory advertising;

(v) Billing and collection services provided to third parties;

(vi) Internet access service;

(vii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 U.S.C. 522, as such section existed on January 1, 2007, and audio and video programming services delivered by providers of commercial mobile radio service as defined in 47 C.F.R. 20.3, as such regulation existed on January 1, 2007;

(viii) Ancillary services; or

(ix) Digital products delivered electronically, including, but not limited to, software, music, video, reading materials, or ring tones;

(bb) Value-added, non-voice data service means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing;

(cc) Vertical service means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services; and

(dd) Voice mail service means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

Source: Laws 2003, LB 282, § 52; Laws 2007, LB223, § 8.
Operative date January 1, 2008.

Cross Reference

Enhanced Wireless 911 Services Act, see section 86-442.

Nebraska Telecommunications Universal Service Fund Act, see section 86-316.

Telecommunications Relay Systems Act, see section 86-301.

77-2704.09 Insulin; prescription medicines; medical equipment; exemptions. (1)

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of insulin and the following when sold for a patient's use under a prescription and which are of the type eligible for coverage under the medical assistance program established pursuant to the Medical Assistance Act: Drugs, not including over-the-counter drugs; durable medical equipment; home medical supplies; prosthetic devices; oxygen; oxygen equipment; and mobility enhancing equipment.

(2) For purposes of this section:

(a) Drug means a compound, substance, preparation, and component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

(i) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and any supplement to any of them;

(ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(iii) Intended to affect the structure or any function of the body;

(b) Durable medical equipment means equipment which can withstand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of illness or injury, is appropriate for use in the home, and is not worn in or on the body. Durable medical equipment includes repair and replacement parts for such equipment;

(c) Home medical supplies means supplies primarily and customarily used to serve a medical purpose which are appropriate for use in the home and are generally not useful to a person in the absence of illness or injury;

(d) Mobility enhancing equipment means equipment which is primarily and customarily used to provide or increase the ability to move from one place to another, which is not generally used by persons with normal mobility, and which is appropriate for use either in a home or a motor vehicle. Mobility enhancing equipment includes repair and replacement parts for such equipment. Mobility enhancing equipment does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer;

(e) Over-the-counter drug means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. 201.66, as such regulation existed on January 1, 2003. The over-the-counter drug label includes a drug facts panel or a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation;

(f) Oxygen equipment means oxygen cylinders, cylinder transport devices including sheaths and carts, cylinder studs and support devices, regulators, flowmeters, tank wrenches, oxygen concentrators, liquid oxygen base dispensers, liquid oxygen portable dispensers, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, and oxygen fittings and accessories;

(g) Prescription means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized under the Uniform Credentialing Act; and

(h) Prosthetic devices means a replacement, corrective, or supportive device worn on or in the body to artificially replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body, and includes any supplies used with such device and repair and replacement parts.

Source: Laws 1992, LB 871, § 33; Laws 1993, LB 345, § 39; Laws 1994, LB 901, § 5; Laws 1999, LB 280, § 1; Laws 2003, LB 282, § 53; Laws 2005, LB 256, § 95; Laws 2006, LB 1248, § 85; Laws 2007, LB463, § 1308.
Operative date December 1, 2008.

Cross Reference

Medical Assistance Act, see section 68-901.

Uniform Credentialing Act, see section 38-101.

77-2704.21 Purchase of motor vehicle for disabled person; exemption. Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of the entire purchase price of a motor vehicle purchased when the maximum amount allowed by law is contributed by the United States Department of Veterans Affairs or the Department of Health and Human Services for a disabled person. If the amount contributed is less than the maximum amount, the exemption shall be based on the portion of the purchase price contributed.

Source: Laws 1992, LB 871, § 40; Laws 1996, LB 1044, § 796; Laws 2007, LB296, § 704.
Operative date July 1, 2007.

77-2704.33 Fixed-price contract; change in sales tax rate; refund of tax; failure to pay tax; penalty. (1) When a written contract exists for a fixed price for a construction, reconstruction, alteration, or improvement project and the sales tax rate is increased during the term of that fixed-price contract, the contractor may apply for a refund of the increased sales tax amount if such refund amount exceeds ten dollars. The contractor shall be refunded such increased amount if the contractor certifies that the contract was entered into prior to the increase in the tax and that the increased tax for which the refund is requested was paid on the building materials annexed to real estate in the project. The contractor shall agree to submit a copy of the contract or other evidence necessary to prove the validity of the application to the satisfaction of the Tax Commissioner. In the event that the sales tax rate is decreased during the term of that fixed-price contract, the contractor shall pay to the Department of Revenue the decreased sales tax amount if the amount of such payment exceeds ten dollars. Failure by a contractor to pay the decreased sales tax amount as provided in this subsection shall

be a Class I misdemeanor if the amount is three hundred dollars or more and a Class IIIA misdemeanor in all other cases.

(2) In the event that construction services are removed from the sales and use tax base during the term of a fixed-price contract, the taxpayer shall pay to the Department of Revenue the decreased sales tax amount if the amount of such payment exceeds ten dollars. Failure by a taxpayer to pay the decreased sales tax amount as provided in this subsection shall be a Class I misdemeanor if the amount is three hundred dollars or more and a Class IIIA misdemeanor in all other cases.

Source: Laws 1992, LB 871, § 57; Laws 1993, LB 345, § 52; Laws 2003, LB 759, § 18; Laws 2004, LB 1017, § 16; Laws 2007, LB367, § 17.
Operative date October 1, 2007.

77-2704.55 Certain contractor labor; refund; procedure; Department of Revenue Contractor Enforcement Fund; created; investment. (1) Construction services performed on an owner-occupied residential unit shall be subject to tax prior to October 1, 2007, but the owner shall be entitled to a refund of any sales and use taxes paid by the owner on construction services pursuant to this subsection. A taxpayer shall be entitled to a refund of any sales tax paid on the gross receipts for the labor of a contractor for any major addition, remodeling, restoration, repair, or renovation described in this section as it existed prior to October 1, 2007. The refund granted in this subsection shall be conditioned upon filing a claim for the refund on a form developed by the Tax Commissioner. The requirements imposed by the Tax Commissioner shall be related to ensuring that the project qualifies for the refund. Any information received pursuant to the requirements of this subsection may be disclosed to any tax official in this state. Any taxpayer who provides false information on the forms required by the Tax Commissioner for purposes of this subsection shall be subject to the penalties provided in subsection (8) of section 77-2705.

(2) The Department of Revenue Contractor Enforcement Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2003, LB 285, § 2; Laws 2003, LB 759, § 17; Laws 2004, LB 1017, § 19; Laws 2006, LB 968, § 6; Laws 2007, LB367, § 18.
Operative date October 1, 2007.

Cross Reference

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

77-2704.57 Personal property used in C-BED project or community-based energy development project; exemption. Sales and use tax shall not be imposed on the gross receipts from the sale, lease, or rental of personal property for use in a C-BED project or community-based energy development project. This exemption shall be conditioned upon filing requirements for the exemption as imposed by the Tax Commissioner. The requirements

imposed by the Tax Commissioner shall be related to ensuring that the property purchased qualifies for the exemption. For purposes of this section:

(1) C-BED project or community-based energy development project means a new wind energy project that:

(a) Has an ownership structure as follows:

(i) For a C-BED project that consists of more than two turbines, is owned by qualified owners with no single qualified owner owning more than fifteen percent of the project and with at least thirty-three percent of the power purchase agreement payments flowing to the qualified owner or owners or local community; or

(ii) For a C-BED project that consists of one or two turbines, is owned by one or more qualified owners with at least thirty-three percent of the power purchase agreement payments flowing to a qualified owner or local community; and

(b) Has a resolution of support adopted:

(i) By the county board of each county in which the C-BED project is to be located; or

(ii) By the tribal council for a C-BED project located within the boundaries of an Indian reservation;

(2) New wind energy project includes any materials used to manufacture, install, construct, repair, or replace a device, such as a wind charger, windmill, or wind turbine, that converts wind energy to a form of usable energy; and

(3) Qualified owner means:

(a) A Nebraska resident;

(b) A limited liability company that is organized under the Limited Liability Company Act and that is entirely made up of members who are Nebraska residents;

(c) A Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act;

(d) An electric supplier as defined in section 70-1001.01, except that ownership in a single C-BED project is limited to no more than:

(i) Fifteen percent by a single electric supplier; and

(ii) A combined total of twenty-five percent ownership by multiple electric suppliers; or

(e) A tribal council.

Source: Laws 2007, LB367, § 11.
Operative date October 1, 2007.

77-2709.01 Repealed. Laws 2007, LB 367, § 31.
Operative date October 1, 2007.

77-2711 Sales and use tax; Tax Commissioner; enforcement; records; retain; reports; wrongful disclosures; exceptions; information provided to municipality; penalty; waiver; streamlined sales and use tax agreement; confidentiality rights. (1)(a) The Tax Commissioner shall enforce sections 77-2701.04 to 77-2713 and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of such sections.

(b) The Tax Commissioner may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

(2) The Tax Commissioner may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of the Nebraska Revenue Act of 1967 and may delegate authority to his or her representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by such act.

(3)(a) Every seller, every retailer, and every person storing, using, or otherwise consuming in this state property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the Tax Commissioner may reasonably require.

(b) Every such seller, retailer, or person shall keep such records for not less than three years from the making of such records unless the Tax Commissioner in writing sooner authorized their destruction.

(4) The Tax Commissioner or any person authorized in writing by him or her may examine the books, papers, records, and equipment of any person selling property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made or, if no return is made by the person, to ascertain and determine the amount required to be paid. In the examination of any person selling property or of any person liable for the use tax, an inquiry shall be made as to the accuracy of the reporting of city sales and use taxes for which the person is liable under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 and the accuracy of the allocation made between the various counties, cities, villages, and municipal counties of the tax due. The Tax Commissioner may make or cause to be made copies of resale or exemption certificates and may pay a reasonable amount to the person having custody of the records for providing such copies.

(5) The taxpayer shall have the right to keep or store his or her records at a point outside this state and shall make his or her records available to the Tax Commissioner at all times.

(6) In administration of the use tax, the Tax Commissioner may require the filing of reports by any person or class of persons having in his, her, or their possession or custody information relating to sales of property, the storage, use, or other consumption of which is subject to the tax. The report shall be filed when the Tax Commissioner requires and shall set forth the names and addresses of purchasers of the property, the sales price of the property, the date of sale, and such other information as the Tax Commissioner may require.

(7) It shall be a Class I misdemeanor for the Tax Commissioner or any official or employee of the Tax Commissioner, the State Treasurer, or the Department of Administrative Services to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and activities of any retailer or any other person visited or examined in the discharge of official duty or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the Tax Commissioner.

Nothing in this section shall be construed to prohibit (a) the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) the inspection by the Attorney General, other legal representative of the state, or county attorney of the reports or returns of any taxpayer when either (i) information on the reports or returns is considered by the Attorney General to be relevant to any action or proceeding instituted by the taxpayer or against whom an action or proceeding is being considered or has been commenced by any state agency or the county or (ii) the taxpayer has instituted an action to review the tax based thereon or an action or proceeding against the taxpayer for collection of tax or failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced, (d) the furnishing of any information to the United States Government or to states allowing similar privileges to the Tax Commissioner, (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f) the disclosure to another party to a transaction of information and records concerning the transaction between the taxpayer and the other party, or (g) the disclosure of information pursuant to section 77-27,195 or 77-5731.

(8) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect the reports or returns of any person filed pursuant to the Nebraska Revenue Act of 1967 when information on the reports or returns is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(9) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit other tax officials of this state to inspect the tax returns, reports, and applications filed under sections 77-2701.04 to 77-2713, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

(10) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may, upon request, provide the county board of any county which has exercised the authority granted by section 81-1254 with a list of the names and addresses of the hotels located within the county for which lodging sales tax returns have been filed or for which lodging sales taxes have been remitted for the county's County Visitors Promotion Fund under the Nebraska Visitors Development Act.

The information provided by the Tax Commissioner shall indicate only the names and addresses of the hotels located within the requesting county for which lodging sales tax returns have been filed for a specified period and the fact that lodging sales taxes remitted by or on behalf of the hotel have constituted a portion of the total sum remitted by the state to the

county for a specified period under the provisions of the Nebraska Visitors Development Act. No additional information shall be revealed.

(11)(a) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner shall, upon written request by the Auditor of Public Accounts or the Legislative Performance Audit Committee, make tax returns and tax return information open to inspection by or disclosure to Auditor of Public Accounts or Legislative Performance Audit Section employees for the purpose of and to the extent necessary in making an audit of the Department of Revenue pursuant to section 50-1205 or 84-304. Confidential tax returns and tax return information shall be audited only upon the premises of the Department of Revenue. All audit workpapers pertaining to the audit of the Department of Revenue shall be stored in a secure place in the Department of Revenue.

(b) No employee of the Auditor of Public Accounts or Legislative Performance Audit Section shall disclose to any person, other than another Auditor of Public Accounts or Legislative Performance Audit Section employee whose official duties require such disclosure or as provided in subsections (2) and (3) of section 50-1213, any return or return information described in the Nebraska Revenue Act of 1967 in a form which can be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

(c) Any person who violates the provisions of this subsection shall be guilty of a Class I misdemeanor. For purposes of this subsection, employee includes a former Auditor of Public Accounts or Legislative Performance Audit Section employee.

(12) For purposes of subsections (11) and (12) of this section:

(a) Disclosure means the making known to any person in any manner a tax return or return information;

(b) Return information means:

(i) A taxpayer's identification number and (A) the nature, source, or amount of his or her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing or (B) any other data received by, recorded by, prepared by, furnished to, or collected by the Tax Commissioner with respect to a return or the determination of the existence or possible existence of liability or the amount of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense; and

(ii) Any part of any written determination or any background file document relating to such written determination; and

(c) Tax return or return means any tax or information return or claim for refund required by, provided for, or permitted under sections 77-2701 to 77-2713 which is filed with the Tax Commissioner by, on behalf of, or with respect to any person and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to or part of the filed return.

(13) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner shall, upon request, provide any municipality which has adopted the local option sales tax under the Local Option Revenue Act with a list of the names and addresses of the retailers which have collected the local option sales tax for the municipality. The request may be made annually and shall be submitted to the Tax Commissioner on or before June 30 of each year. The information provided by the Tax Commissioner shall indicate only the names and addresses of the retailers. No additional information shall be revealed.

(14) In all proceedings under the Nebraska Revenue Act of 1967, the Tax Commissioner may act for and on behalf of the people of the State of Nebraska. The Tax Commissioner in his or her discretion may waive all or part of any penalties provided by the provisions of such act, but may not waive the minimum interest on delinquent taxes specified in section 45-104.02, as such rate may from time to time be adjusted, except interest on use taxes voluntarily reported by an individual.

(15)(a) The purpose of this subsection is to set forth the state's policy for the protection of the confidentiality rights of all participants in the system operated pursuant to the streamlined sales and use tax agreement and of the privacy interests of consumers who deal with model 1 sellers.

(b) For purposes of this subsection:

(i) Anonymous data means information that does not identify a person;

(ii) Confidential taxpayer information means all information that is protected under a member state's laws, regulations, and privileges; and

(iii) Personally identifiable information means information that identifies a person.

(c) The state agrees that a fundamental precept for model 1 sellers is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a certified service provider shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

(d) The governing board of the member states in the streamlined sales and use tax agreement may certify a certified service provider only if that certified service provider certifies that:

(i) Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;

(ii) Personally identifiable information is only used and retained to the extent necessary for the administration of model 1 with respect to exempt purchasers;

(iii) It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information, and whether it discloses the information to member states. Such notice shall be satisfied by a written privacy policy statement accessible by the public on the web site of the certified service provider;

(iv) Its collection, use, and retention of personally identifiable information is limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased; and

(v) It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.

(e) The state shall provide public notification to consumers, including exempt purchasers, of the state's practices relating to the collection, use, and retention of personally identifiable information.

(f) When any personally identifiable information that has been collected and retained is no longer required for the purposes set forth in subdivision (15)(d)(iv) of this section, such information shall no longer be retained by the member states.

(g) When personally identifiable information regarding an individual is retained by or on behalf of the state, it shall provide reasonable access by such individual to his or her own information in the state's possession and a right to correct any inaccurately recorded information.

(h) If anyone other than a member state, or a person authorized by that state's law or the agreement, seeks to discover personally identifiable information, the state from whom the information is sought should make a reasonable and timely effort to notify the individual of such request.

(i) This privacy policy is subject to enforcement by the Attorney General.

(j) All other laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, this subsection does not enlarge or limit the state's authority to:

(i) Conduct audits or other reviews as provided under the agreement and state law;

(ii) Provide records pursuant to the federal Freedom of Information Act, disclosure laws with governmental agencies, or other regulations;

(iii) Prevent, consistent with state law, disclosure of confidential taxpayer information;

(iv) Prevent, consistent with federal law, disclosure or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service; and

(v) Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

Source: Laws 1967, c. 487, § 11, p. 1566; Laws 1969, c. 683, § 7, p. 2641; Laws 1977, LB 39, § 239; Laws 1981, LB 170, § 6; Laws 1982, LB 705, § 2; Laws 1984, LB 962, § 12; Laws 1985, LB 344, § 4; Laws 1987, LB 523, § 17; Laws 1991, LB 773, § 10; Laws 1992, LB 871, § 61; Laws 1992, Fourth Spec. Sess., LB 1, § 31; Laws 1993, LB 345, § 60; Laws 1994, LB 1175, § 1; Laws 1995, LB 134, § 3; Laws 1996, LB 1177, § 18; Laws 2001, LB 142, § 56; Laws 2003, LB 282, § 73; Laws 2005, LB 216, § 9; Laws 2005, LB 312, § 11; Laws 2006, LB 588, § 8; Laws 2007, LB94, § 1; Laws 2007, LB223, § 9.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 94, section 1, with LB 223, section 9, to reflect all amendments.

Note: The changes made by LB 94 became effective September 1, 2007. The changes made by LB 223 became operative September 1, 2007.

Cross Reference

Local Option Revenue Act, see section 77-27,148.

Nebraska Visitors Development Act, see section 81-1263.

77-2712.03 Streamlined sales and use tax agreement; ratified; governing board; members. (1) The streamlined sales and use tax agreement, as adopted by the streamlined sales tax implementing states on November 12, 2002, including amendments through December 14, 2006, is hereby ratified by the Legislature. The Governor shall enter into the agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the Department of Revenue is authorized to act jointly with other states that are members under Articles VII or VIII of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers. The department is further authorized to take other actions permissible under law reasonably required to implement the provisions set forth in the agreement. Other actions authorized by this section include, but are not limited to, the adoption and promulgation of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the agreement.

(2) The Tax Commissioner or his or her designee and two representatives of the Legislature appointed by the Executive Board of the Legislative Council are authorized to represent Nebraska before the other member states under the agreement. The state also agrees to participate in and comply with the procedures of and decisions made by the governing board of the member states. These provisions of the agreement include the creation of the organization as provided in Article VII of the agreement, the requirements for state entry and withdrawal as provided in Article VIII of the agreement, amendments to the agreement as provided in Article IX of the agreement, and a dispute resolution process as provided in Article X of the agreement.

Source: Laws 2001, LB 172, § 4; Laws 2003, LB 282, § 75; Laws 2007, LB223, § 10. Operative date September 1, 2007.

Cross Reference

Executive Board of the Legislative Council, see section 50-401.01.

77-2712.05 Streamlined sales and use tax agreement; requirements. By agreeing to the terms of the streamlined sales and use tax agreement, this state agrees to abide by the following requirements:

(1) Uniform state rate. The state shall comply with restrictions to achieve over time more uniform state rates through the following:

- (a) Limiting the number of state rates;
- (b) Limiting the application of maximums on the amount of state tax that is due on a transaction; and

(c) Limiting the application of thresholds on the application of state tax;

(2) Uniform standards. The state hereby establishes uniform standards for the following:

- (a) Sourcing of transactions to taxing jurisdictions as provided in sections 77-2703.01 to 77-2703.04;

(b) Administration of exempt sales as set out by the agreement and using procedures as determined by the governing board;

(c) Allowances a seller can take for bad debts as provided in section 77-2708; and

(d) Sales and use tax returns and remittances. To comply with the agreement, the Tax Commissioner shall:

(i) Require only one remittance for each return except as provided in this subdivision. If any additional remittance is required, it may only be required from retailers that collect more than thirty thousand dollars in sales and use taxes in the state during the preceding calendar year as provided in this subdivision. The amount of any additional remittance may be determined through a calculation method rather than actual collections. Any additional remittance shall not require the filing of an additional return;

(ii) Require, at his or her discretion, all remittances from sellers under models 1, 2, and 3 to be remitted electronically;

(iii) Allow for electronic payments by both automated clearinghouse credit and debit;

(iv) Provide an alternative method for making same day payments if an electronic funds transfer fails;

(v) Provide that if a due date falls on a legal banking holiday, the taxes are due to that state on the next succeeding business day; and

(vi) Require that any data that accompanies a remittance be formatted using uniform tax type and payment type codes approved by the governing board of the member states to the streamlined sales and use tax agreement;

(3) Uniform definitions. (a) The state shall utilize the uniform definitions of sales and use tax terms as provided in the agreement. The definitions enable Nebraska to preserve its ability to make taxability and exemption choices not inconsistent with the uniform definitions.

(b) The state may enact a product-based exemption without restriction if the agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, the state may exempt all items included within the definition but shall not exempt only part of the items included within the definition unless the agreement sets out the exemption for part of the items as an acceptable variation.

(c) The state may enact an entity-based or a use-based exemption without restriction if the agreement does not have a definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, states may enact an entity-based or a use-based exemption that applies to that product as long as the exemption utilizes the agreement definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, states may enact an entity-based or a use-based exemption for the product without restriction.

(d) For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded;

(4) Central registration. The state shall participate in an electronic central registration system that allows a seller to register to collect and remit sales and use taxes for all member states. Under the system:

(a) A retailer registering under the agreement is registered in this state;

(b) The state agrees not to require the payment of any registration fees or other charges for a retailer to register in the state if the retailer has no legal requirement to register;

(c) A written signature from the retailer is not required;

(d) An agent may register a retailer under uniform procedures adopted by the member states pursuant to the agreement;

(e) A retailer may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the retailer of its liability for remitting to the proper states any taxes collected;

(f) When registering, the retailer that is registered under the agreement may select one of the following methods of remittances or other method allowed by state law to remit the taxes collected:

(i) Model 1, wherein a seller selects a certified service provider as an agent to perform all the seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases;

(ii) Model 2, wherein a seller selects a certified automated system to use which calculates the amount of tax due on a transaction; and

(iii) Model 3, wherein a seller utilizes its own proprietary automated sales tax system that has been certified as a certified automated system; and

(g) Sellers who register within twelve months after this state's first approval of a certified service provider are relieved from liability, including the local option tax, for tax not collected or paid if the seller was not registered between October 1, 2004, and September 30, 2005. Such relief from liability shall be in accordance with the terms of the agreement;

(5) No nexus attribution. The state agrees that registration with the central registration system and the collection of sales and use taxes in the state will not be used as a factor in determining whether the seller has nexus with the state for any tax at any time;

(6) Local sales and use taxes. The agreement requires the reduction of the burdens of complying with local sales and use taxes as provided in sections 13-319, 13-324, 13-326, 77-2701.03, 77-27,142, 77-27,143, and 77-27,144 that require the following:

(a) No variation between the state and local tax bases;

(b) Statewide administration of all sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;

(c) Limitations on the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

(d) Uniform notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions;

(7) Complete a taxability matrix approved by the governing board. (a) Notice of changes in the taxability of the products or services listed will be provided as required by the governing board.

(b) The entries in the matrix shall be provided and maintained in a data base that is in a downloadable format approved by the governing board.

(c) Sellers, model 2 sellers, and certified service providers are relieved from liability, including the local option tax, for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by the member state in the taxability matrix or for relying on product-based classifications that have been reviewed and approved by the state. The state shall notify the certified service provider or model 2 seller if an item or transaction is incorrectly classified as to its taxability;

(8) Monetary allowances. The state agrees to allow any monetary allowances that are to be provided by the states to sellers or certified service providers in exchange for collecting sales and use taxes as provided in Article VI of the agreement;

(9) State compliance. The agreement requires the state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member;

(10) Consumer privacy. The state hereby adopts a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information as provided in section 77-2711; and

(11) Advisory councils. The state agrees to the recognition of an advisory council of private-sector representatives and an advisory council of member and nonmember state representatives to consult with in the administration of the agreement.

Source: Laws 2001, LB 172, § 6; Laws 2003, LB 282, § 77; Laws 2004, LB 1017, § 20; Laws 2005, LB 16, § 1; Laws 2006, LB 887, § 4; Laws 2007, LB223, § 11.
Operative date September 1, 2007.

(c) INCOME TAX

77-2715.02 Rate schedules; established; other taxes; tax rate; tax tables. (1) Whenever the primary rate is changed by the Legislature under section 77-2715.01, the Tax Commissioner shall update the rate schedules required in subsection (2) of this section to reflect the new primary rate and shall publish such updated schedules.

(2) The following rate schedules are hereby established for the Nebraska individual income tax and shall be in the following form:

(a) For taxable years beginning or deemed to begin before January 1, 2007, income amounts for columns A and E shall be:

(i) \$0, \$2,400, \$17,500, and \$27,000, for single returns;

- (ii) \$0, \$4,000, \$31,000, and \$50,000, for married filing joint returns;
 - (iii) \$0, \$3,800, \$25,000, and \$35,000, for head-of-household returns;
 - (iv) \$0, \$2,000, \$15,500, and \$25,000, for married filing separate returns; and
 - (v) \$0, \$500, \$4,700, and \$15,150, for estates and trusts;
- (b) For taxable years beginning or deemed to begin on or after January 1, 2007, income amounts for columns A and E shall be:
- (i) \$0, \$2,400, \$17,500, and \$27,000, for single returns;
 - (ii) \$0, \$4,800, \$35,000, and \$54,000, for married filing joint returns;
 - (iii) \$0, \$4,500, \$28,000, and \$40,000, for head-of-household returns;
 - (iv) \$0, \$2,400, \$17,500, and \$27,000, for married filing separate returns; and
 - (v) \$0, \$500, \$4,700, and \$15,150, for estates and trusts;
- (c) The amount in column C shall be the total amount of the tax imposed on income less than the amount in column A;
- (d) The amount in column D shall be the rate on the income in excess of the amount in column E;
- (e) For taxable years beginning or deemed to begin before January 1, 2003, under the Internal Revenue Code of 1986, as amended, the primary rate set by the Legislature shall be multiplied by the following factors to compute the tax rates for column D. The factors for the brackets, from lowest to highest bracket, shall be .6784, .9432, 1.3541, and 1.8054;
- (f) For taxable years beginning or deemed to begin on or after January 1, 2003, under the Internal Revenue Code of 1986, as amended, the primary rate set by the Legislature shall be multiplied by the following factors to compute the tax rates for column D. The factors for the brackets, from lowest to highest bracket, shall be .6932, .9646, 1.3846, and 1.848;
- (g) The amounts for column C shall be rounded to the nearest dollar, and the amounts in column D shall be rounded to hundredths of one percent; and
- (h) One rate schedule shall be established for each federal filing status.
- (3) The tax rate schedules shall use the format set forth in this subsection.

A	B	C	D	E
Taxable income	but not	pay	plus	of the
over	over			amount over

- (4) The tax rate applied to other federal taxes included in the computation of the Nebraska individual income tax shall be eight times the primary rate.
- (5) The Tax Commissioner shall prepare, from the rate schedules, tax tables which can be used by a majority of the taxpayers to determine their Nebraska tax liability. The design of the tax tables shall be determined by the Tax Commissioner. The size of the tax table brackets may change as the level of income changes. The difference in tax between two tax table brackets shall not exceed fifteen dollars. The Tax Commissioner may build the personal exemption credit and standard deduction amounts into the tax tables.

(6) The Tax Commissioner may require by rule and regulation that all taxpayers shall use the tax tables if their income is less than the maximum income included in the tax tables.

Source: Laws 1990, LB 1059, § 34; Laws 1993, LB 240, § 3; Laws 1994, LB 977, § 11; Laws 1997, LB 401, § 1; Laws 1998, LB 1028, § 1; Laws 2002, LB 1085, § 17; Laws 2003, LB 759, § 21; Laws 2006, LB 968, § 7; Laws 2007, LB367, § 19.
Operative date January 1, 2007.

77-2715.07 Income tax credits. (1) There shall be allowed to qualified resident individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit equal to the federal credit allowed under section 22 of the Internal Revenue Code; and

(b) A credit for taxes paid to another state as provided in section 77-2730.

(2) There shall be allowed to qualified resident individuals against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) For returns filed reporting federal adjusted gross incomes of greater than twenty-nine thousand dollars, a nonrefundable credit equal to twenty-five percent of the federal credit allowed under section 21 of the Internal Revenue Code of 1986, as amended;

(b) For returns filed reporting federal adjusted gross income of twenty-nine thousand dollars or less, a refundable credit equal to a percentage of the federal credit allowable under section 21 of the Internal Revenue Code of 1986, as amended, whether or not the federal credit was limited by the federal tax liability. The percentage of the federal credit shall be one hundred percent for incomes not greater than twenty-two thousand dollars, and the percentage shall be reduced by ten percent for each one thousand dollars, or fraction thereof, by which the reported federal adjusted gross income exceeds twenty-two thousand dollars;

(c) A refundable credit for individuals who qualify for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended; and a refundable credit as provided in section 77-5209.01 for individuals who qualify for an income tax credit as a qualified beginning farmer or livestock producer under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended;

(d) A refundable credit for individuals who qualify for an income tax credit under the Nebraska Advantage Microenterprise Tax Credit Act or the Nebraska Advantage Research and Development Act; and

(e) A refundable credit equal to ten percent of the federal credit allowed under section 32 of the Internal Revenue Code of 1986, as amended.

(3) There shall be allowed to all individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit for personal exemptions allowed under section 77-2716.01;

(b) A credit for contributions to certified community betterment programs as provided in the Community Development Assistance Act. Each partner, each shareholder of an electing subchapter S corporation, each beneficiary of an estate or trust, or each member of a limited liability company shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, estate, trust, or limited liability company income; and

(c) A credit for investment in a biodiesel facility as provided in section 77-27,236.

(4) There shall be allowed as a credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit to all resident estates and trusts for taxes paid to another state as provided in section 77-2730; and

(b) A credit to all estates and trusts for contributions to certified community betterment programs as provided in the Community Development Assistance Act.

(5)(a) For all taxable years beginning on or after January 1, 2007, and before January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to fifty percent of the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(b) For all taxable years beginning on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(c) Each partner, shareholder, member, or beneficiary shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, limited liability company, or estate or trust income. If any partner, shareholder, member, or beneficiary cannot fully utilize the credit for that year, the credit may not be carried forward or back.

Source: Laws 1987, LB 773, § 6; Laws 1989, LB 739, § 2; Laws 1993, LB 5, § 3; Laws 1993, LB 121, § 503; Laws 1993, LB 240, § 4; Laws 1993, LB 815, § 23; Laws 1994, LB 977, § 12; Laws 1996, LB 898, § 5; Laws 1998, LB 1028, § 2; Laws 1999, LB 630, § 1; Laws 2001, LB 433, § 4; Laws 2005, LB 312, § 12; Laws 2006, LB 968, § 8; Laws 2006, LB 990, § 1; Laws 2007, LB343, § 3; Laws 2007, LB367, § 20; Laws 2007, LB456, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 343, section 3, with LB 367, section 20, and LB 456, section 1, to reflect all amendments.

Note: The changes made by LB 343 and LB 367 became operative for taxable years beginning or deemed to begin on or after January 1, 2007, under the Internal Revenue Code of 1986, as amended. The changes made by LB 456 became effective September 1, 2007.

Cross Reference

Beginning Farmer Tax Credit Act, see section 77-5201.
Community Development Assistance Act, see section 13-201.
Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.
Nebraska Advantage Research and Development Act, see section 77-5801.

77-2715.08 Capital gains; terms, defined. For purposes of this section and section 77-2715.09, unless the context otherwise requires:

(1) Capital stock means common or preferred stock, either voting or nonvoting. Capital stock does not include stock rights, stock warrants, stock options, or debt securities;

(2)(a) Corporation means any corporation which, at the time of the first sale or exchange for which the election is made, has been in existence and actively doing business in this state for at least three years.

(b) Corporation also includes:

(i) Any corporation which is a member of a unitary group of corporations, as defined in section 77-2734.04, which includes a corporation defined in subdivision (2)(a) of this section; and

(ii) Any predecessor or successor corporation of a corporation defined in subdivision (2)(a) of this section.

(c) All corporations issuing capital stock for which an election under section 77-2715.09 is made shall, at the time of the first sale or exchange for which the election is made, have (i) at least five shareholders and (ii) at least two shareholders or groups of shareholders who are not related to each other and each of which owns at least ten percent of the capital stock.

For purposes of this subdivision, two persons shall be considered to be related when, under section 318 of the Internal Revenue Code of 1986, one is a person who owns, directly or indirectly, capital stock that if directly owned would be attributed to the other person or is the brother, sister, aunt, uncle, cousin, niece, or nephew of the other person who owns capital stock either directly or indirectly;

(3) Extraordinary dividend means any dividend exceeding twenty percent of the fair market value of the stock on which it is paid as of the date the dividend is declared; and

(4) Predecessor or successor corporation means a corporation that was a party to a reorganization that was entirely or substantially tax free and that occurred during or after the employment of the individual making an election under section 77-2715.09.

Source: Laws 1987, LB 775, § 11; Laws 1991, LB 773, § 11; Laws 2007, LB343, § 4.
 Operative date January 1, 2007.

77-2715.09 Capital stock; sale or exchange; extraordinary dividend and capital gains treatment. (1) Every resident individual may elect under this section to subtract from federal adjusted gross income, or for trusts qualifying under subdivision (2)(c) of this section from taxable income, the extraordinary dividends paid on and the capital gain from the sale or exchange of capital stock of a corporation acquired by the individual (a) on account of employment by such corporation or (b) while employed by such corporation.

(2)(a) Each individual shall be entitled to one election under subsection (1) of this section during his or her lifetime for the capital stock of one corporation.

(b) The election shall apply to subsequent extraordinary dividends paid and sales and exchanges in any taxable year if the dividend is received on, or the sale or exchange is of, capital stock in the same corporation and such capital stock was acquired as provided in subsection (1) of this section.

(c) After the individual makes an election, such election shall apply to extraordinary dividends paid on, and the sale or exchange of, capital stock of the corporation transferred by inter vivos gift from the individual to his or her spouse or issue or a trust for the benefit of the individual's spouse or issue if such capital stock was acquired as provided in subsection (1) of this section. This subdivision shall apply, in the case of the spouse, only if the spouse was married to such individual on the date of the extraordinary dividend or sale or exchange or the date of death of the individual.

(d) If the individual dies without making an election, the surviving spouse or, if there is no surviving spouse, the oldest surviving issue may make the election for capital stock that would have qualified under subdivision (c) of this subsection.

(3) An election under subsection (1) of this section shall be made by including a written statement with the taxpayer's Nebraska income tax return or an amended return for the taxable year for which the election is made. The written statement shall identify the corporation that issued the stock and the grounds for the election under this section and shall state that the taxpayer elects to have this section apply.

Source: Laws 1987, LB 775, § 12; Laws 1991, LB 773, § 12; Laws 2007, LB343, § 5.
Operative date January 1, 2007.

77-2716 Income tax; adjustments. (1) The following adjustments to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be made for interest or dividends received:

(a) There shall be subtracted interest or dividends received by the owner of obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(b) There shall be subtracted that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (a) of this subsection as reported to the recipient by the regulated investment company;

(c) There shall be added interest or dividends received by the owner of obligations of the District of Columbia, other states of the United States, or their political subdivisions, authorities, commissions, or instrumentalities to the extent excluded in the computation of gross income for federal income tax purposes except that such interest or dividends shall not be added if received by a corporation which is a regulated investment company;

(d) There shall be added that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision

(c) of this subsection and excluded for federal income tax purposes as reported to the recipient by the regulated investment company; and

(e)(i) Any amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this subsection or the investment in the regulated investment company and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(ii) Any amount added under this subsection shall be reduced by any expenses incurred in the production of such income to the extent disallowed in the computation of federal taxable income.

(2) There shall be allowed a net operating loss derived from or connected with Nebraska sources computed under rules and regulations adopted and promulgated by the Tax Commissioner consistent, to the extent possible under the Nebraska Revenue Act of 1967, with the laws of the United States. For a resident individual, estate, or trust, the net operating loss computed on the federal income tax return shall be adjusted by the modifications contained in this section. For a nonresident individual, estate, or trust or for a partial-year resident individual, the net operating loss computed on the federal return shall be adjusted by the modifications contained in this section and any carryovers or carrybacks shall be limited to the portion of the loss derived from or connected with Nebraska sources.

(3) There shall be subtracted from federal adjusted gross income for all taxable years beginning on or after January 1, 1987, the amount of any state income tax refund to the extent such refund was deducted under the Internal Revenue Code, was not allowed in the computation of the tax due under the Nebraska Revenue Act of 1967, and is included in federal adjusted gross income.

(4) Federal adjusted gross income, or, for a fiduciary, federal taxable income shall be modified to exclude the portion of the income or loss received from a small business corporation with an election in effect under subchapter S of the Internal Revenue Code or from a limited liability company organized pursuant to the Limited Liability Company Act that is not derived from or connected with Nebraska sources as determined in section 77-2734.01.

(5) There shall be subtracted from federal adjusted gross income or, for corporations and fiduciaries, federal taxable income dividends received or deemed to be received from corporations which are not subject to the Internal Revenue Code.

(6) There shall be subtracted from federal taxable income a portion of the income earned by a corporation subject to the Internal Revenue Code of 1986 that is actually taxed by a foreign country or one of its political subdivisions at a rate in excess of the maximum federal tax rate for corporations. The taxpayer may make the computation for each foreign country or for groups of foreign countries. The portion of the taxes that may be deducted shall be computed in the following manner:

(a) The amount of federal taxable income from operations within a foreign taxing jurisdiction shall be reduced by the amount of taxes actually paid to the foreign jurisdiction that are not deductible solely because the foreign tax credit was elected on the federal income tax return;

(b) The amount of after-tax income shall be divided by one minus the maximum tax rate for corporations in the Internal Revenue Code; and

(c) The result of the calculation in subdivision (b) of this subsection shall be subtracted from the amount of federal taxable income used in subdivision (a) of this subsection. The result of such calculation, if greater than zero, shall be subtracted from federal taxable income.

(7) Federal adjusted gross income shall be modified to exclude any amount repaid by the taxpayer for which a reduction in federal tax is allowed under section 1341(a)(5) of the Internal Revenue Code.

(8)(a) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent included, by income from interest, earnings, and state contributions received from the Nebraska educational savings plan trust created in sections 85-1801 to 85-1814.

(b) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent not deducted for federal income tax purposes, by the amount of any gift, grant, or donation made to the Nebraska educational savings plan trust for deposit in the endowment fund of the trust.

(c) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced by any contributions as a participant in the Nebraska educational savings plan trust, to the extent not deducted for federal income tax purposes, but not to exceed two thousand five hundred dollars per married filing separate return or five thousand dollars for any other return.

(d) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount resulting from the cancellation of a participation agreement refunded to the taxpayer as a participant in the Nebraska educational savings plan trust to the extent previously deducted as a contribution to the trust.

(9)(a) For income tax returns filed after September 10, 2001, for taxable years beginning or deemed to begin before January 1, 2006, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by eighty-five percent of any amount of any federal bonus depreciation received under the federal Job Creation and Worker Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003, under section 168(k) or section 1400L of the Internal Revenue Code of 1986, as amended, for assets placed in service after September 10, 2001, and before December 31, 2005.

(b) For a partnership, limited liability company, cooperative, including any cooperative exempt from income taxes under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, subchapter S corporation, or joint venture, the

increase shall be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities.

(c) For a corporation with a unitary business having activity both inside and outside the state, the increase shall be apportioned to Nebraska in the same manner as income is apportioned to the state by section 77-2734.05.

(d) The amount of bonus depreciation added to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income by this subsection shall be subtracted in a later taxable year. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin before January 1, 2003, under the Internal Revenue Code of 1986, as amended, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years.

(10) For taxable years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2006, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount of any capital investment that is expensed under section 179 of the Internal Revenue Code of 1986, as amended, that is in excess of twenty-five thousand dollars that is allowed under the federal Jobs and Growth Tax Act of 2003. Twenty percent of the total amount of expensing added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following tax years.

(11)(a) Federal adjusted gross income shall be reduced by contributions, up to two thousand dollars per married filing jointly return or one thousand dollars for any other return, and any investment earnings made as a participant in the Nebraska long-term care savings plan under the Long-Term Care Savings Plan Act, to the extent not deducted for federal income tax purposes.

(b) Federal adjusted gross income shall be increased by the withdrawals made as a participant in the Nebraska long-term care savings plan under the act by a person who is not a qualified individual or for any reason other than transfer of funds to a spouse, long-term care expenses, long-term care insurance premiums, or death of the participant, including withdrawals made by reason of cancellation of the participation agreement or termination of the plan, to the extent previously deducted as a contribution or as investment earnings.

(12) There shall be added to federal adjusted gross income for individuals, estates, and trusts any amount taken as a credit for franchise tax paid by a financial institution under sections 77-3801 to 77-3807 as allowed by subsection (6) of section 77-2715.07.

Source: Laws 1967, c. 487, § 16, p. 1579; Laws 1983, LB 619, § 1; Laws 1984, LB 962, § 15; Laws 1984, LB 1124, § 3; Laws 1985, LB 273, § 50; Laws 1986, LB 774, § 9; Laws 1987, LB 773, § 9; Laws 1987, LB 523, § 20; Laws 1989, LB 458, § 2; Laws 1989, LB 459, § 3; Laws 1991, LB 773, § 13; Laws 1993, LB 121, § 504; Laws 1994, LB 977, § 13; Laws 1997, LB 401, § 2; Laws 1998, LB 1028, § 3; Laws 2000, LB 1003, § 15; Laws 2002, LB 1085, § 18; Laws 2003, LB 596, § 1; Laws 2005, LB 216, § 10; Laws 2006, LB 965, § 6; Laws 2006, LB 968, § 9; Laws 2007, LB338, § 1; Laws 2007, LB368, § 135; Laws 2007, LB456, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 338, section 1, with LB 368, section 135, and LB 456, section 2, to reflect all amendments.

Note: The changes made by LB 338 became operative for all taxable years beginning or deemed to begin on or after January 1, 2007, under the Internal Revenue Code of 1986, as amended. The changes made by LB 456 became effective September 1, 2007. The changes made by LB 368 became operative January 1, 2008.

Cross Reference

Limited Liability Company Act, see section 21-2601.

Long-Term Care Savings Plan Act, see section 77-6101.

77-2716.01 Personal exemptions; standard deduction; computation. (1) Every individual shall be allowed to subtract from his or her income tax liability an amount for personal exemptions. The amount allowed to be subtracted shall be the credit amount for the year as provided in this section multiplied by the number of exemptions allowed on the federal return. For tax year 1993, the credit amount shall be sixty-five dollars; for tax year 1994, the credit amount shall be sixty-nine dollars; for tax year 1995, the credit amount shall be sixty-nine dollars; for tax year 1996, the credit amount shall be seventy-two dollars; for tax year 1997, the credit amount shall be eighty-six dollars; for tax year 1998, the credit amount shall be eighty-eight dollars; for tax year 1999, and each year thereafter, the credit amount shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code of 1986, as amended. The eighty-eight-dollar credit amount shall be adjusted for cumulative inflation since 1998. If any credit amount is not an even dollar amount, the amount shall be rounded to the nearest dollar. For nonresident individuals and partial-year resident individuals, the personal exemption credit shall be subtracted as specified in subsection (3) of section 77-2715.

(2)(a) For tax years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2004, under the Internal Revenue Code of 1986, as amended, every individual who did not itemize deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income a standard deduction based on the filing status used on the federal return except as the amount is adjusted under section 77-2716.03. The standard deduction shall be the smaller of the federal standard deduction actually allowed or (i) for single taxpayers four thousand seven hundred fifty dollars, (ii) for head of household taxpayers seven thousand dollars, (iii) for married filing jointly taxpayers seven thousand nine hundred fifty dollars, and (iv) for married filing separately taxpayers three thousand nine hundred seventy-five dollars. Taxpayers who are allowed additional federal standard deduction amounts because of age or

blindness shall be allowed an increase in the Nebraska standard deduction for each additional amount allowed on the federal return. The additional amounts shall be for married taxpayers, nine hundred fifty dollars, and for single or head of household taxpayers, one thousand one hundred fifty dollars.

(b) For tax years beginning or deemed to begin on or after January 1, 2007, under the Internal Revenue Code of 1986, as amended, every individual who did not itemize deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income a standard deduction based on the filing status used on the federal return. The standard deduction shall be the smaller of the federal standard deduction actually allowed or (i) for single taxpayers three thousand dollars and (ii) for head of household taxpayers four thousand four hundred dollars. The standard deduction for married filing jointly taxpayers shall be double the standard deduction for single taxpayers, and for married filing separately taxpayers, the standard deduction shall be the same as single taxpayers. Taxpayers who are allowed additional federal standard deduction amounts because of age or blindness shall be allowed an increase in the Nebraska standard deduction for each additional amount allowed on the federal return. The additional amounts shall be for married taxpayers six hundred dollars and for single or head of household taxpayers seven hundred fifty dollars. The amounts in this subdivision will be indexed using 1987 as the base year.

(c) For tax years beginning or deemed to begin on or after January 1, 2007, the standard deduction amounts, including the additional standard deduction amounts, in this subsection shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code of 1986, as amended. If any amount is not a multiple of fifty dollars, the amount shall be rounded to the next lowest multiple of fifty dollars.

(3) Every individual who itemized deductions on his or her federal return shall be allowed to subtract from federal adjusted gross income the greater of either the standard deduction allowed in subsection (2) of this section or his or her federal itemized deductions, except for the amount for state or local income taxes included in federal itemized deductions before any federal disallowance.

Source: Laws 1987, LB 773, § 10; Laws 1988, LB 1234, § 2; Laws 1989, LB 739, § 3; Laws 1991, LB 300, § 3; Laws 1993, LB 240, § 5; Laws 1997, LB 401, § 3; Laws 1998, LB 1028, § 4; Laws 2003, LB 596, § 2; Laws 2004, LB 355, § 1; Laws 2006, LB 968, § 10; Laws 2007, LB367, § 21.
Operative date January 1, 2007.

77-2717 Income tax; estates; trusts; rate; fiduciary return; contents; filing; state income tax; contents; credits. (1)(a) The tax imposed on all resident estates and trusts shall be a percentage of the federal taxable income of such estates and trusts as modified in section 77-2716, plus a percentage of the federal alternative minimum tax and the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by (i) substituting Nebraska taxable income for federal taxable income, (ii) calculating what the federal alternative minimum tax would be on Nebraska taxable income and adjusting such calculations for any items which are reflected differently in the

determination of federal taxable income, and (iii) applying Nebraska rates to the result. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all resident estates and trusts under the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act.

(b) The tax imposed on all nonresident estates and trusts shall be the portion of the tax imposed on resident estates and trusts which is attributable to the income derived from sources within this state. The tax which is attributable to income derived from sources within this state shall be determined by multiplying the liability to this state for a resident estate or trust with the same total income by a fraction, the numerator of which is the nonresident estate's or trust's Nebraska income as determined by sections 77-2724 and 77-2725 and the denominator of which is its total federal income after first adjusting each by the amounts provided in section 77-2716. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, reduced by the percentage of the total income which is attributable to income from sources outside this state, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all nonresident estates and trusts under the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act.

(2) In all instances wherein a fiduciary income tax return is required under the provisions of the Internal Revenue Code, a Nebraska fiduciary return shall be filed, except that a fiduciary return shall not be required to be filed regarding a simple trust if all of the trust's beneficiaries are residents of the State of Nebraska, all of the trust's income is derived from sources in this state, and the trust has no federal tax liability. The fiduciary shall be responsible for making the return for the estate or trust for which he or she acts, whether the income be taxable to the estate or trust or to the beneficiaries thereof. The fiduciary shall include in the return a statement of each beneficiary's distributive share of net income when such income is taxable to such beneficiaries.

(3) The beneficiaries of such estate or trust who are residents of this state shall include in their income their proportionate share of such estate's or trust's federal income and shall reduce their Nebraska tax liability by their proportionate share of the credits as provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act. There shall be allowed to a beneficiary a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) If any beneficiary of such estate or trust is a nonresident during any part of the estate's or trust's taxable year, he or she shall file a Nebraska income tax return which shall include (a) in Nebraska adjusted gross income that portion of the estate's or trust's Nebraska income, as

determined under sections 77-2724 and 77-2725, allocable to his or her interest in the estate or trust and (b) a reduction of the Nebraska tax liability by his or her proportionate share of the credits as provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act and shall execute and forward to the fiduciary, on or before the original due date of the Nebraska fiduciary return, an agreement which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from or connected with sources in this state, and such agreement shall be attached to the Nebraska fiduciary return for such taxable year.

(5) In the absence of the nonresident beneficiary's executed agreement being attached to the Nebraska fiduciary return, the estate or trust shall remit a portion of such beneficiary's income which was derived from or attributable to Nebraska sources with its Nebraska return for the taxable year. The amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the beneficiary.

(6) The Tax Commissioner may allow a nonresident beneficiary to not file a Nebraska income tax return if the nonresident beneficiary's only source of Nebraska income was his or her share of the estate's or trust's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the estate or trust has remitted the amount required by subsection (5) of this section on behalf of such nonresident beneficiary. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident beneficiary.

(7) For purposes of this section, unless the context otherwise requires, simple trust shall mean any trust instrument which (a) requires that all income shall be distributed currently to the beneficiaries, (b) does not allow amounts to be paid, permanently set aside, or used in the tax year for charitable purposes, and (c) does not distribute amounts allocated in the corpus of the trust. Any trust which does not qualify as a simple trust shall be deemed a complex trust.

Source: Laws 1967, c. 487, § 17, p. 1579; Laws 1969, c. 690, § 1, p. 2683; Laws 1973, LB 531, § 1; Laws 1985, LB 273, § 51; Laws 1987, LB 523, § 21; Laws 1991, LB 773, § 14; Laws 1994, LB 977, § 14; Laws 2000, LB 1223, § 1; Laws 2001, LB 433, § 5; Laws 2005, LB 312, § 13; Laws 2006, LB 1003, § 6; Laws 2007, LB367, § 22.
Operative date January 1, 2007.

Cross Reference

Beginning Farmer Tax Credit Act, see section 77-5201.
Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.
Nebraska Advantage Research and Development Act, see section 77-5801.

77-2734.03 Income tax; tax credits. (1)(a) For taxable years commencing prior to January 1, 1997, any (i) insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523, (ii) electric cooperative organized under the Joint Public Power Authority Act, or (iii) credit union shall be credited, in the computation of the tax due under the Nebraska

Revenue Act of 1967, with the amount paid during the taxable year as taxes on such premiums and assessments and taxes in lieu of intangible tax.

(b) For taxable years commencing on or after January 1, 1997, any insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523, any electric cooperative organized under the Joint Public Power Authority Act, or any credit union shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as (i) taxes on such premiums and assessments included as Nebraska premiums and assessments under section 77-2734.05 and (ii) taxes in lieu of intangible tax.

(c) For taxable years commencing or deemed to commence prior to, on, or after January 1, 1998, any insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523 shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as assessments allowed as an offset against premium and related retaliatory tax liability pursuant to section 44-4233.

(2) There shall be allowed to corporate taxpayers a tax credit for contributions to community betterment programs as provided in the Community Development Assistance Act.

(3) There shall be allowed to corporate taxpayers a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) The changes made to this section by Laws 2004, LB 983, apply to motor fuels purchased during any tax year ending or deemed to end on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended.

(5) There shall be allowed to corporate taxpayers refundable income tax credits under the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act.

(6) There shall be allowed to corporate taxpayers a nonrefundable income tax credit for investment in a biodiesel facility as provided in section 77-27,236.

Source: Laws 1984, LB 1124, § 6; Laws 1985, LB 273, § 55; Laws 1986, LB 1114, § 19; Laws 1992, LB 719A, § 176; Laws 1992, LB 1063, § 184; Laws 1993, LB 5, § 4; Laws 1993, LB 815, § 25; Laws 1996, LB 898, § 6; Laws 1997, LB 55, § 4; Laws 1997, LB 61, § 1; Laws 1998, LB 1035, § 24; Laws 2000, LB 1223, § 2; Laws 2001, LB 433, § 6; Laws 2004, LB 983, § 68; Laws 2005, LB 312, § 14; Laws 2007, LB343, § 6; Laws 2007, LB367, § 23.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 343, section 6, with LB 367, section 23, to reflect all amendments.

Note: The changes made by LB 343 and LB 367 became operative for taxable years beginning or deemed to begin on or after January 1, 2007, under the Internal Revenue Code of 1986, as amended.

Cross Reference

Beginning Farmer Tax Credit Act, see section 77-5201.

Community Development Assistance Act, see section 13-201.

Joint Public Power Authority Act, see section 70-1401.

Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.

Nebraska Advantage Research and Development Act, see section 77-5801.

77-2753 Income tax; withholding from wages and other payments. (1)(a) Every employer and payor maintaining an office or transacting business within this state and making payment of any wages or other payments as defined in subsection (5) of this section which are

taxable under the Nebraska Revenue Act of 1967 to any individual shall deduct and withhold from such wages for each payroll period and from such payments a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages and payments to the payee during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee or payee under such act with respect to the amount of such wages and payments included in his or her taxable income during the calendar year. The method of determining the amount to be withheld shall be prescribed by rules and regulations of the Tax Commissioner. Such rules and regulations may allow withholding to be computed at a percentage of the federal withholding for gambling winnings or supplemental payments, including bonuses, commissions, overtime pay, and sales awards which are not paid at the same time as other wages. Any withholding tables prescribed by the Tax Commissioner shall be provided to the budget division of the Department of Administrative Services and the Legislative Fiscal Analyst for review at least sixty days before the tables become effective.

(b) Notwithstanding the amount of federal withholding or the rules and regulations of the Department of Revenue determining the amount of withholding, every employer and payor employing twenty-five or more employees shall withhold at least three percent of the gross wages minus tax qualified deductions of each employee unless the employee provides satisfactory evidence that a lesser amount of withholding is justified in the employee's particular circumstances. Such satisfactory evidence may include birth certificates or social security information for dependents or other evidence that reasonably assures the employer that the employee is not improperly or fraudulently evading or defeating the income tax by reducing or eliminating withholding.

(2)(a) Every payor who is either (i) making a payment or payments in excess of five thousand dollars or (ii) maintaining an office or transacting business within this state and making a payment or payments related to such business in excess of six hundred dollars, and such payment or payments are for personal services performed or to be performed substantially within this state, to a nonresident individual, other than an employee, who is not subject to withholding on such payment under the Internal Revenue Code or a corporation, partnership, or limited liability company described in subdivision (c) of this subsection, shall be deemed an employer, and the individual performing the personal services shall be deemed an employee for the purposes of this section. The payor shall deduct and withhold from such payments the percentage of such payments prescribed in subdivision (b) of this subsection. If the individual performing the personal services provides the payor with a statement of the expenses reasonably related to the personal services, the total payment or payments may be reduced by the total expenses before computing the amount to deduct and withhold, except that such reduction shall not be more than fifty percent of such payment or payments.

(b) For any payment or payments for the same service, award, or purse that totals less than twenty-eight thousand dollars, the percentage deducted from such payment or payments

pursuant to this subsection shall be four percent, and for all other payments, the percentage shall be six percent.

(c) For any corporation, partnership, or limited liability company that receives compensation for personal services in this state and of which all or substantially all of the shareholders, partners, or members are the individuals performing the personal services, including, but not limited to, individual athletes, entertainers, performers, or public speakers performing such personal services, such compensation shall be deemed wages of the individuals performing the personal services and subject to the income tax imposed on individuals by the Nebraska Revenue Act of 1967.

(d) The withholding required by this subsection shall not apply to any payment to a nonresident alien, corporation, partnership, or limited liability company if such individual, shareholder, partner, or member provides the payor with a statement that the income earned is not subject to tax because of a treaty obligation of the United States.

(3) The Tax Commissioner may enter into agreements with the tax departments of other states, which require income tax to be withheld from the payment of wages, salaries, and such other payments, so as to govern the amounts to be withheld from the wages and salaries of and other payments to residents of such states. Such agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld and, under rules and regulations adopted and promulgated by the Tax Commissioner, may relieve employers and payors in this state from withholding income tax on wages, salaries, and such other payments paid to nonresident employees and payees. The agreements authorized by this subsection shall be subject to the condition that the tax department of such other states grant similar treatment to residents of this state.

(4) The Tax Commissioner shall enter into an agreement with the United States Office of Personnel Management for the withholding of income tax imposed on individuals by the Nebraska Revenue Act of 1967 on civil service annuity payments for those recipients who voluntarily request withholding. The agreement shall be pursuant to 5 U.S.C. 8345 and the rules and regulations adopted and promulgated by the Tax Commissioner.

(5) Wages and other payments subject to withholding shall mean payments that are subject to withholding under the Internal Revenue Code of 1986 and are (a) payments made by employers to employees, except such payments subject to 26 U.S.C. 3406, (b) payments of gambling winnings, or (c) pension or annuity payments when the recipient has requested the payor to withhold from such payments.

Source: Laws 1967, c. 487, § 53, p. 1594; Laws 1977, LB 355, § 1; Laws 1984, LB 962, § 18; Laws 1986, LB 1027, § 208; Laws 1987, LB 284, § 1; Laws 1987, LB 773, § 21; Laws 1987, LB 523, § 24; Laws 1988, LB 1064, § 1; Laws 1990, LB 896, § 1; Laws 1993, LB 121, § 509; Laws 1993, LB 345, § 61; Laws 1994, LB 1175, § 2; Laws 2005, LB 216, § 13; Laws 2007, LB223, § 12.
Operative date January 1, 2008.

77-2756 Income tax; employer or payor; withholding for tax. (1) Except as provided in subsection (2) of this section, every employer or payor required to deduct and withhold income tax under the Nebraska Revenue Act of 1967 shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter,

file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner or to a depository designated by the Tax Commissioner the taxes so required to be deducted and withheld. When the aggregate amount required to be deducted and withheld by any employer or payor for either the first or second month of a calendar quarter exceeds five hundred dollars, the employer or payor shall, by the fifteenth day of the succeeding month, pay over such aggregate amount to the Tax Commissioner or to a depository designated by the Tax Commissioner. The amount so paid shall be allowed as a credit against the liability shown on the employer's or payor's quarterly withholding return required by this section. The Tax Commissioner may, by rule and regulation, provide for the filing of returns and the payment of the tax deducted and withheld on other than a quarterly basis.

(2) When the aggregate amount required to be deducted and withheld by any employer or payor for the entire calendar year is less than five hundred dollars or the employer or payor is allowed to file federal withholding returns annually, the employer or payor shall, for each calendar year, on or before the last day of the month following the close of such calendar year, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner or to a depository designated by the Tax Commissioner the taxes so required to be deducted and withheld. The employer or payor may elect or the Tax Commissioner may require the filing of returns and the payment of taxes on a quarterly basis.

(3) Whenever any employer or payor fails to collect, truthfully account for, pay over, or make returns of the income tax as required by this section, the Tax Commissioner may serve a notice requiring such employer or payor to collect the taxes which become collectible after service of such notice, to deposit such taxes in a bank approved by the Tax Commissioner in a separate account in trust for and payable to the Tax Commissioner, and to keep the amount of such tax in such account until paid over to the Tax Commissioner. Such notice shall remain in effect until a notice of cancellation is served by the Tax Commissioner.

(4) Any employer or payor may appoint an agent in accordance with section 3504 of the Internal Revenue Code of 1986, as amended, for the purpose of withholding, reporting, or making payment of amounts withheld on behalf of the employer or payor. The agent shall be considered an employer or payor for purposes of the Nebraska Revenue Act of 1967 and, with the actual employer or payor, shall be jointly and severally liable for any amount required to be withheld and paid over to the Tax Commissioner and any additions to tax, penalties, and interest with respect thereto.

(5) The employer or payor shall also file on or before March 15 of the succeeding year a copy of each statement furnished by such employer or payor to each employee or payee with respect to taxes withheld on wages or payments subject to withholding. Any employer, payor, or agent who furnished more than two hundred fifty statements for a year shall file the required copies electronically in a manner approved by the Tax Commissioner that is compatible with federal electronic filing requirements or methods.

Source: Laws 1967, c. 487, § 56, p. 1596; Laws 1984, LB 962, § 21; Laws 1988, LB 1064, § 2; Laws 1997, LB 62, § 2; Laws 2005, LB 216, § 14; Laws 2007, LB223, § 13.
Operative date January 1, 2008.

77-2790 Income tax; deficiency; interest; failure to report or file; prohibited acts; penalties. (1)(a) If any part of a deficiency is the result of negligence or intentional disregard of rules and regulations but without intent to defraud, the Tax Commissioner may add to the tax an amount equal to five percent of the deficiency.

(b) If any part of a requested refund is overstated as a result of negligence, material misstatement, or intentional disregard of rules and regulations but without intent to defraud, the Tax Commissioner may add to the tax an amount equal to five percent of the overstatement of the refund.

(2)(a) If any part of a deficiency is the result of fraud, the Tax Commissioner may add to the tax an amount equal to fifty percent of the deficiency. This amount shall be in lieu of any amount determined under subsection (1) of this section.

(b) If any part of a requested refund is overstated as a result of fraud, the Tax Commissioner may add to the tax an amount equal to fifty percent of the overstatement of the refund. This amount shall be in lieu of any amount determined under subsection (1) of this section.

(3) If any taxpayer fails to pay all or any part of an installment of any tax due, he or she shall be deemed to have made an underpayment of estimated tax. The Tax Commissioner shall determine the amount of underpayment of estimated tax in accordance with the laws of the United States.

(4) If any taxpayer, with intent to evade or defeat any income tax imposed by the Nebraska Revenue Act of 1967 or the payment thereof, claims an excessive number of exemptions or in any other manner overstates the amount of withholding, he or she shall be guilty of a Class II misdemeanor. If any employer or payor, without intent to evade or defeat any income tax imposed by the Nebraska Revenue Act of 1967 or the payment thereof, fails to make a return and pay a tax withheld by him or her at the time required by or under the act, such employer or payor shall be liable for such taxes and shall pay the same together with interest thereon and any addition to tax assessed pursuant to subsection (1) of this section. Such interest and addition to tax shall not be charged to or collected from the employee or payee by the employer or payor. The Tax Commissioner shall have the same rights and powers for the collection of such tax, interest, and addition to tax against such employer or payor as are now prescribed by the act for the collection of income tax against a taxpayer.

(5) If any person required to collect, withhold, truthfully account for, and pay over the income tax imposed by the Nebraska Revenue Act of 1967 willfully fails to collect or withhold such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, the Tax Commissioner may, in addition to other penalties provided by law, impose, assess, and collect a penalty equal to the total amount of the tax evaded, not collected, not withheld, or not accounted for and paid over. No addition to tax under subsection (1) or (2) of this section shall be imposed for any offense to which this subsection applies.

(6) If any person with fraudulent intent fails to pay, or to deduct or withhold and pay, any income tax, to make, render, sign, or certify any return of estimated tax, or to supply any information within the time required, the Tax Commissioner may impose, assess, and collect a penalty of not more than one thousand dollars, in addition to any other amounts required under the income tax provisions of the Nebraska Revenue Act of 1967.

(7) If any person for frivolous or groundless reasons or with the intent to delay or impede the administration of the Nebraska Revenue Act of 1967 (a) fails to pay over any tax due and owing under such act, (b) fails to file any return required under such act, or (c) files what purports to be a return but which does not contain sufficient information from which to determine the correctness of the self-assessment of tax or which contains information that indicates that the self-assessment of tax is substantially incorrect, such person shall pay a penalty of five hundred dollars for each occurrence. The penalty provided by this subsection shall be in addition to any other penalties provided by law.

(8) Any person who aids, procures, advises, or assists in the preparation of any return, affidavit, refund claim, or other document with the knowledge that its use will result in the material understatement of the tax liability of another person or the material overstatement of the amount of a refund of another person shall, in addition to other penalties provided by law, pay a penalty of one thousand dollars with respect to each separate return or other document.

(a) For the purposes of this subsection, a person furnishing typing, reproducing, or other mechanical assistance shall not be treated as having aided or assisted in the preparation of such document.

(b) A determination of a material deficiency shall not be sufficient to show that a person has aided or assisted in a material understatement of the tax liability of another person.

(c) The penalty in this subsection shall not be imposed more than once on any person for having aided or assisted in the preparation of documents for the same taxpayer, the same tax, and the same tax period regardless of the number of documents involved.

(d) Such penalty shall apply whether or not the understatement is with the consent of the person authorized to present the return, affidavit, refund claim, or other document.

(9) The additions to the income tax and penalties relating thereto provided by the Nebraska Revenue Act of 1967 shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes, and any reference in such act to income tax or the tax imposed by the act shall be deemed also to refer to additions to the tax and penalties provided by this section. For purposes of the deficiency procedures provided in section 77-2776, this subsection shall not apply to:

(a) Any addition to tax under subsection (1) of section 77-2789 except as to that portion attributable to a deficiency;

(b) Any addition to tax for underpayment of estimated tax as provided in subsection (3) of this section; or

(c) Any additional penalty under subsection (6), (7), or (8) of this section.

(10) For purposes of subsections (1) and (2) of this section relating to deficiencies resulting from negligence or fraud, the amount shown as the tax by the taxpayer upon his or her return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return determined with regard to any extension of time for such filing.

(11) For purposes of subsections (5) and (6) of this section, the term person shall include an individual, corporation, partnership, or limited liability company, or an officer or employee of any corporation, including a dissolved corporation, or a member or employee of any partnership or limited liability company, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(12) If any person fails to comply with the reporting or filing requirements of sections 77-2772, 77-2775, and 77-2786 or the rules and regulations adopted and promulgated thereunder, the Tax Commissioner may impose, assess, and collect a penalty against such person for each instance of noncompliance of twenty-five percent of the tax due. Such amount shall be in addition to any other penalty, tax, or interest otherwise imposed by law for such noncompliance.

(13) If any nonresident individual provides false information or statements to an employer or payor regarding the portion of his or her wages or payments that are subject to withholding for this state which if used would result in the amount withheld being less than seventy-five percent of his or her income tax liability on such wages or payments or if any employer or payor uses such information when the employer or payor knows such information is false or maintains records which show such information is false, the Tax Commissioner may, in addition to other penalties provided by law, impose, assess, and collect from such individual, payor, or employer the penalties provided in subsections (5) and (6) of this section.

(14) If any employer or payor employing twenty-five or more employees who is required to withhold and pay over income tax imposed by the Nebraska Revenue Act of 1967 fails to either (a) withhold at least three percent of the wages of any employee or (b) obtain satisfactory evidence from the employee justifying a lower withholding amount as required by subdivision (1)(b) of section 77-2753, the Tax Commissioner may impose, assess, and collect a penalty of not more than one thousand dollars per violation.

Source: Laws 1967, c. 487, § 90, p. 1611; Laws 1984, LB 962, § 29; Laws 1985, LB 273, § 65; Laws 1988, LB 1064, § 3; Laws 1993, LB 121, § 511; Laws 1993, LB 345, § 69; Laws 2007, LB223, § 14.
Operative date January 1, 2008.

77-27,119.01 Income tax form; contribution to Wildlife Conservation Fund. The Tax Commissioner shall include on the individual income tax return form space in which the individual taxpayer may, if a refund is due, designate one dollar or a greater amount of such refund as a contribution to the Wildlife Conservation Fund created in section 37-811.

Source: Laws 1984, LB 466, § 6; Laws 1987, LB 773, § 27; Laws 1998, LB 922, § 408; Laws 2007, LB299, § 19.
Effective date September 1, 2007.

(d) GENERAL PROVISIONS

77-27,131 Tax Commissioner; security required; when; sale of security; notice. (1) Unless otherwise specifically provided, the Tax Commissioner, whenever he or she deems it necessary to insure compliance with the provisions of the Nebraska Revenue Act of 1967, may require any person subject to the act to place with him or her such security as he or she may determine. The amount of the necessary security shall be fixed by the Tax Commissioner but, except as provided in this section, shall not be greater than three times the estimated average amount payable for the reporting period by such persons pursuant to the act. In the case of persons habitually delinquent in their obligations under the act, the amount of the security shall not be greater than five times the estimated average amount payable for the reporting period by such persons pursuant to the act. The amount of the security may be increased or decreased by the Tax Commissioner at any time, subject to the limitations set forth in this subsection.

(2) The Tax Commissioner may sell the security at public auction or, in the case of security in the form of bearer bonds issued by the United States or this state which have a prevailing market price, at a private sale at a price not lower than the prevailing market price if it becomes necessary to make such sale in order to recover any tax, interest, or penalties due on any amount required to be collected. Notice of the sale shall be given to the person who deposited the security at least ten days before the sale. The notice may be given personally or by mail addressed to the person at the address furnished to the Tax Commissioner and as it appears in the records of the Tax Commissioner. Upon such sale, any surplus above the amounts due shall be returned to the person who placed the security.

Source: Laws 1967, c. 487, § 131, p. 1636; Laws 1991, LB 773, § 20; Laws 2007, LB223, § 15.
Operative date January 1, 2008.

77-27,132 Revenue Distribution Fund; created; use; collections under act; disposition. (1) There is hereby created a fund to be designated the Revenue Distribution Fund which shall be set apart and maintained by the Tax Commissioner. Revenue not required to be credited to the General Fund or any other specified fund may be credited to the Revenue Distribution Fund. Credits and refunds of such revenue shall be paid from the Revenue Distribution Fund. The balance of the amount credited, after credits and refunds, shall be allocated as provided by the statutes creating such revenue.

(2) The Tax Commissioner shall pay to a depository bank designated by the State Treasurer all amounts collected under the Nebraska Revenue Act of 1967. The Tax Commissioner shall present to the State Treasurer bank receipts showing amounts so deposited in the bank, and of the amounts so deposited the State Treasurer shall credit to the Highway Trust Fund all of the proceeds of the sales and use taxes derived from the sale or lease for periods of more than thirty-one days of motor vehicles, trailers, and semitrailers, except that the proceeds equal to any sales tax rate provided for in section 77-2701.02 that is in excess of five percent derived

from the sale or lease for periods of more than thirty-one days of motor vehicles, trailers, and semitrailers shall be credited to the Highway Allocation Fund. The balance of all amounts collected under the Nebraska Revenue Act of 1967 shall be credited to the General Fund.

Source: Laws 1967, c. 487, § 132, p. 1636; Laws 1969, c. 695, § 1, p. 2692; Laws 1969, c. 313, § 2, p. 1130; Laws 1971, LB 53, § 9; Laws 1972, LB 343, § 23; Laws 1975, LB 233, § 2; Laws 1976, LB 868, § 1; Laws 1984, LB 466, § 5; Laws 1986, LB 599, § 23; Laws 1986, LB 539, § 3; Laws 1987, LB 730, § 30; Laws 1989, LB 258, § 11; Laws 2003, LB 759, § 22; Laws 2006, LB 904, § 4; Laws 2007, LB305, § 1.
Operative date October 1, 2007.

(g) LOCAL OPTION REVENUE ACT

77-27,144 Municipalities; sales and use tax; Tax Commissioner; collection; distribution. The Tax Commissioner shall collect the tax imposed by any incorporated municipality concurrently with collection of a state tax in the same manner as the state tax is collected. The Tax Commissioner shall remit monthly the proceeds of the tax to the incorporated municipalities levying the tax, after deducting the amount of refunds made and three percent of the remainder to be credited to the Municipal Equalization Fund. The Tax Commissioner shall keep full and accurate records of all money received and distributed under the provisions of the Local Option Revenue Act. When proceeds of a tax levy are received but the identity of the incorporated municipality which levied the tax is unknown and is not identified within six months after receipt, the amount shall be credited to the Municipal Equalization Fund. The municipality may request the names and addresses of the retailers which have collected the tax as provided in section 77-2711.

Source: Laws 1969, c. 629, § 3, p. 2530; Laws 1971, LB 53, § 10; Laws 1976, LB 868, § 2; Laws 1996, LB 1177, § 19; Laws 1998, LB 1104, § 13; Laws 2007, LB94, § 2.
Effective date September 1, 2007.

(j) SETOFF FOR CHILD, SPOUSAL, AND MEDICAL SUPPORT DEBTS

77-27,162 Collection system; development; duties. The Department of Revenue, the Department of Administrative Services, and the Department of Health and Human Services shall develop and implement a collection system to carry out the intent of section 77-27,160.

Source: Laws 1984, LB 845, § 8; Laws 1996, LB 1044, § 799; Laws 2007, LB296, § 705.
Operative date July 1, 2007.

(m) NEBRASKA ADVANTAGE RURAL DEVELOPMENT ACT

77-27,187.01 Terms, defined. For purposes of the Nebraska Advantage Rural Development Act, unless the context otherwise requires:

- (1) Any term has the same meaning as used in the Nebraska Revenue Act of 1967;
- (2) Equivalent employees means the number of employees computed by dividing the total hours paid in a year to employees by the product of forty times the number of weeks in a year;
- (3) Livestock means all animals, including cattle, horses, sheep, goats, hogs, chickens, turkeys, and other species of game birds and animals raised and produced subject to permit and regulation by the Game and Parks Commission or the Department of Agriculture;

(4) Livestock modernization or expansion means the construction, improvement, or acquisition of buildings, facilities, or equipment for livestock housing, confinement, feeding, production, and waste management;

(5) Livestock production means the active use, management, and operation of real and personal property for the commercial production of livestock, for the commercial breeding, training, showing, or racing of horses, or for the use of horses in a recreational or tourism enterprise. The activity will be considered commercial if the gross income derived from an activity for two or more of the taxable years in the period of seven consecutive taxable years which ends with the taxable year exceeds the deductions attributable to such activity or, if the operation has been in existence for less than seven years, if the activity is engaged in for the purpose of generating a profit;

(6) Qualified employee leasing company means a company which places all employees of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing basis for a fee and, by written agreement between the employee leasing company and a client-lessee, grants to the client-lessee input into the hiring and firing of the employees leased to the client-lessee;

(7) Related taxpayers includes any corporations that are part of a unitary business under the Nebraska Revenue Act of 1967 but are not part of the same corporate taxpayer, any business entities that are not corporations but which would be a part of the unitary business if they were corporations, and any business entities if at least fifty percent of such entities are owned by the same persons or related taxpayers and family members as defined in the ownership attribution rules of the Internal Revenue Code of 1986, as amended;

(8) Taxpayer means a corporate taxpayer or other person subject to either an income tax imposed by the Nebraska Revenue Act of 1967 or a franchise tax under Chapter 77, article 38, or a partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture that is or would otherwise be a member of the same unitary group if incorporated, which is, or whose partners, members, or owners representing an ownership interest of at least ninety percent of the control of such entity are, subject to or exempt from such taxes, and any other partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture when the partners, members, or owners representing an ownership interest of at least ninety percent of the control of such entity are subject to or exempt from such taxes; and

(9) Year means the taxable year of the taxpayer.

Source: Laws 1997, LB 886, § 2; Laws 1998, LB 1104, § 15; Laws 1999, LB 539, § 1; Laws 2003, LB 608, § 2; Laws 2005, LB 312, § 17; Laws 2006, LB 990, § 2; Laws 2006, LB 1003, § 8; Laws 2007, LB223, § 16; Laws 2007, LB368, § 136.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 223, section 16, with LB 368, section 136, to reflect all amendments.

Note: The changes made by LB 223 became operative September 1, 2007. The changes made by LB 368 became operative January 1, 2008.

Cross Reference

Nebraska Revenue Act of 1967, see section 77-2701.

77-27,187.02 Application; contents; fee; Nebraska Advantage Rural Development Fund; created; use; investment; written agreement; contents. (1) To earn the incentives set forth in the Nebraska Advantage Rural Development Act, the taxpayer shall file an application for an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the full expected employment or type of livestock production and the investment amount for a qualified business, as described in section 77-27,189, in this state;

(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and to define a project; and

(c) An application fee of five hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Nebraska Advantage Rural Development Fund, which 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. The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, and the amounts of increased employment or investment.

(3)(a) The Tax Commissioner shall approve the application and authorize the total amount of credits expected to be earned as a result of the project if he or she is satisfied that the plan in the application defines a project that (i) meets the requirements established in section 77-27,188 and such requirements will be reached within the required time period and (ii) for projects other than livestock modernization or expansion projects, is located in an eligible county or enterprise zone.

(b) The Tax Commissioner shall not approve further applications once the expected credits from the approved projects total two million five hundred thousand dollars in each of fiscal years 2004-05 and 2005-06 and three million dollars in fiscal year 2006-07 and each fiscal year thereafter. Four hundred dollars of the application fee shall be refunded to the applicant if the application is not approved because the expected credits from approved projects exceed such amounts.

(c) Applications for benefits shall be considered in the order in which they are received.

(d) Applications shall be filed by November 1 and shall be complete by December 1 of each calendar year. Any application that is filed after November 1 or that is not complete on December 1 shall be considered to be filed during the following calendar year.

(4) After approval, the taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plans of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to

use the incentives contained in the Nebraska Advantage Rural Development Act up to the total amount that were authorized by the Tax Commissioner at the time of approval. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

- (a) The levels of employment and investment required by the act for the project;
- (b) The time period under the act in which the required level must be met;
- (c) The documentation the taxpayer will need to supply when claiming an incentive under the act;
- (d) The date the application was filed; and
- (e) The maximum amount of credits authorized.

Source: Laws 2003, LB 608, § 3; Laws 2005, LB 312, § 18; Laws 2006, LB 990, § 3; Laws 2007, LB223, § 17.
Operative date September 1, 2007.

Cross Reference

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

77-27,188 Tax credit; allowed; when; amount; repayment. (1) A refundable credit against the taxes imposed by the Nebraska Revenue Act of 1967 shall be allowed to any taxpayer who has an approved application pursuant to the Nebraska Advantage Rural Development Act, who is engaged in a qualifying business as described in section 77-27,189, and who after January 1, 2006:

(a)(i) Increases employment by two new equivalent employees and makes an increased investment of at least one hundred twenty-five thousand dollars prior to the end of the first taxable year after the year in which the application was submitted in any county in this state with a population of fewer than fifteen thousand inhabitants, according to the most recent federal decennial census, or in any designated enterprise zone pursuant to 42 U.S.C. 11501 or the Enterprise Zone Act; or

(ii) Increases employment by five new equivalent employees and makes an increased investment of at least two hundred fifty thousand dollars prior to the end of the first taxable year after the year in which the application was submitted in any county in this state with a population of less than twenty-five thousand inhabitants, according to the most recent federal decennial census; and

(b) Pays a minimum qualifying wage of eight dollars and twenty-five cents per hour to the new equivalent employees for which tax credits are sought under the Nebraska Advantage Rural Development Act. The Department of Revenue shall adjust the minimum qualifying wages required for applications filed after January 1, 2004, and each January 1 thereafter, as follows: The current rural Nebraska average weekly wage shall be divided by the rural Nebraska average weekly wage for 2003; and the result shall be multiplied by the eight dollars and twenty-five cents minimum qualifying wage for 2003 and rounded to the nearest one cent. The amount of increase or decrease in the minimum qualifying wages for any year shall be the

cumulative change in the rural Nebraska average weekly wage since 2003. For purposes of this subsection, rural Nebraska average weekly wage means the most recent average weekly wage paid by all employers in all counties with a population of less than twenty-five thousand inhabitants as reported by October 1 by the Department of Labor.

For purposes of this section, a teleworker working in Nebraska from his or her residence for a taxpayer shall be considered an employee of the taxpayer, and property of the taxpayer provided to the teleworker working in Nebraska from his or her residence shall be considered an investment. Teleworker includes an individual working on a per-item basis and an independent contractor working for the taxpayer so long as the taxpayer withholds Nebraska income tax from wages or other payments made to such teleworker. For purposes of calculating the number of new equivalent employees when the teleworkers are paid on a per-item basis or are independent contractors, the total wages or payments made to all such new employees during the year shall be divided by the qualifying wage as determined in subdivision (b) of this subsection, with the result divided by two thousand eighty hours.

(2) A refundable credit against the taxes imposed by the Nebraska Revenue Act of 1967 shall be allowed to any taxpayer who (a) has an approved application pursuant to the Nebraska Advantage Rural Development Act, (b) is engaged in livestock production, and (c) after January 1, 2007, invests at least fifty thousand dollars for livestock modernization or expansion.

(3) The amount of the credit allowed under subsection (1) of this section shall be three thousand dollars for each new equivalent employee and two thousand seven hundred fifty dollars for each fifty thousand dollars of increased investment. The amount of the credit allowed under subsection (2) of this section shall be ten percent of the investment, not to exceed a credit of thirty thousand dollars. For each application, a taxpayer engaged in livestock production may qualify for a credit under either subsection (1) or (2) of this section, but cannot qualify for more than one credit per application.

(4) An employee of a qualified employee leasing company shall be considered to be an employee of the client-lessee for purposes of this section if the employee performs services for the client-lessee. A qualified employee leasing company shall provide the Department of Revenue access to the records of employees leased to the client-lessee.

(5) The credit shall not exceed the amounts set out in the application and approved by the Tax Commissioner.

(6)(a) If a taxpayer who receives tax credits creates fewer jobs or less investment than required in the project agreement, the taxpayer shall repay the tax credits as provided in this subsection.

(b) If less than seventy-five percent of the required jobs in the project agreement are created, one hundred percent of the job creation tax credits shall be repaid. If seventy-five percent or more of the required jobs in the project agreement are created, no repayment of the job creation tax credits is necessary.

(c) If less than seventy-five percent of the required investment in the project agreement is created, one hundred percent of the investment tax credits shall be repaid. If seventy-five

percent or more of the required investment in the project agreement is created, no repayment of the investment tax credits is necessary.

(7) For taxpayers who submitted applications for benefits under the Nebraska Advantage Rural Development Act before January 1, 2006, subsection (1) of this section, as such subsection existed immediately prior to such date, shall continue to apply to such taxpayers. The changes made by Laws 2005, LB 312, shall not preclude a taxpayer from receiving the tax incentives earned prior to January 1, 2006.

Source: Laws 1986, LB 1124, § 2; Laws 1987, LB 270, § 2; Laws 1989, LB 335, § 1; Laws 1993, LB 725, § 16; Laws 1995, LB 134, § 6; Laws 1997, LB 886, § 3; Laws 1999, LB 539, § 2; Laws 2001, LB 169, § 2; Laws 2003, LB 608, § 4; Laws 2005, LB 312, § 19; Laws 2006, LB 990, § 4; Laws 2007, LB223, § 18.
Operative date September 1, 2007.

Cross Reference

Enterprise Zone Act, see section 13-2101.01.

Ethanol facility eligible for tax credit, requirements, see section 66-1349.

Nebraska Revenue Act of 1967, see section 77-2701.

77-27,189 Qualified business, defined. (1) A qualified business means any business engaged in:

- (a) Storage, warehousing, distribution, transportation, or sale of tangible personal property;
- (b) Livestock production;
- (c) Conducting research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;
- (d) Performing data processing, telecommunication, insurance, or financial services. For purposes of this subdivision, financial services includes only financial services provided by any financial institution subject to tax under Chapter 77, article 38, or any person or entity licensed by the Department of Banking and Finance or the Securities and Exchange Commission and telecommunication services includes community antenna television service, Internet access, satellite ground station, data center, call center, or telemarketing;
- (e) Assembly, fabrication, manufacture, or processing of tangible personal property;
- (f) Administrative management of any activities, including headquarter facilities relating to such activities; or
- (g) Any combination of the activities listed in this subsection.

(2) Qualified business does not include:

- (a) Any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of food prepared for immediate consumption or are sales to the ultimate consumer of tangible personal property which is not (i) assembled, fabricated, manufactured, or processed by the taxpayer or (ii) used by the purchaser in any of the activities listed in subsection (1) of this section; and
- (b) Any casino.

Source: Laws 1986, LB 1124, § 3; Laws 1987, LB 270, § 5; Laws 1993, LB 725, § 18; Laws 2003, LB 608, § 7; Laws 2006, LB 990, § 6; Laws 2007, LB223, § 19.
Operative date September 1, 2007.

77-27,190 Employment expansion; how determined. (1) A taxpayer shall be deemed to have new equivalent employees when the new equivalent employees hired during a taxable year are in addition to the number of total equivalent employees in the taxable year preceding the date of application.

(2) Qualifying business employees who work within and without this state shall be considered only to the extent they are paid for work performed within this state.

(3) The hours worked by any person considered an independent contractor or the employee of another taxpayer shall not be used in the computation under this section.

Source: Laws 1986, LB 1124, § 4; Laws 1987, LB 270, § 6; Laws 1997, LB 886, § 5; Laws 2003, LB 608, § 8; Laws 2007, LB223, § 20.
Operative date September 1, 2007.

77-27,192 Existing business acquisition, disposal, reorganization, or relocation; computation; certain transactions excluded. (1)(a) If the taxpayer acquires an existing business, the increases determined in sections 77-27,190 and 77-27,191 shall be computed as though the taxpayer had owned the business for the entire taxable year preceding the date of application.

(b) If the taxpayer disposes of an existing business, and the new owner maintains the minimum increases in the levels of investment and employment required in section 77-27,188 to create a credit, the taxpayer shall not be required to make any repayment under section 77-27,188.02 solely because of the disposition of the business.

(2) If the structure of a business is reorganized, the taxpayer shall compute the increases on a consistent basis for all periods.

(3) If the taxpayer moves a business from one location to another and the business was operated in this state during the taxable year preceding the date of application, the increases determined in sections 77-27,190 and 77-27,191 shall be computed as though the taxpayer had operated the business at the new location for the entire taxable year preceding the date of application.

(4) If the taxpayer enters into any of the following transactions, they shall be presumed to be a transaction entered into for the purpose of generating benefits under the Nebraska Advantage Rural Development Act and shall not be allowed in the computation of any benefit or the meeting of any required levels under the agreement except as specifically provided in this subsection:

(a) The purchase or lease of any property which was previously owned by the taxpayer which filed the application or a related taxpayer unless the first purchase by either the taxpayer which filed the application or a related taxpayer was first placed in service in the state after the beginning of the taxable year the application was filed;

(b) The renegotiation of any lease in existence during the taxable year the application was filed which does not materially change any of the terms of the lease other than the expiration date;

(c) The purchase or lease of any property from a related taxpayer, except that the taxpayer which filed the application will be allowed any benefits under the act to which the related taxpayer would have been entitled on the purchase or lease of the property if the related taxpayer was considered the taxpayer;

(d) Any transaction entered into primarily for the purpose of receiving benefits under the act which is without a business purpose and does not result in increased economic activity in the state; and

(e) Any activity that results in benefits under the Ethanol Development Act.

Source: Laws 1986, LB 1124, § 6; Laws 1997, LB 886, § 6; Laws 2001, LB 169, § 4; Laws 2007, LB223, § 21.
Operative date September 1, 2007.

Cross Reference

Ethanol Development Act, see section 66-1330.

77-27,194 Credit; when transferable. The credit allowed under the Nebraska Advantage Rural Development Act shall not be transferable except in the following situations:

(1) Any credit allowable to a partnership, a limited liability company, a subchapter S corporation, a cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, a limited cooperative association, or an estate or trust may be distributed to the partners, limited liability company members, shareholders, patrons, limited cooperative association members, or beneficiaries. Any credit distributed shall be distributed in the same manner as income is distributed. A credit distributed shall be considered a credit used and the partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, estate, or trust shall be liable for any repayment under section 77-27,188.02;

(2) The incentives previously allowed and the future allowance of incentives may be transferred when a project covered by an agreement is transferred by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986;

(3) The acquiring taxpayer, as of the date of notification of the Tax Commissioner of the completed transfer, shall be entitled to any unused credits and to any future incentives allowable under the act;

(4) The acquiring taxpayer shall be liable for any repayment that becomes due after the date of the transfer for the repayment of any benefits received either before or after the transfer; and

(5) If a taxpayer operating a qualifying business and allowed a credit under section 77-27,188 dies and there is credit remaining after the filing of the final return for the taxpayer, the personal representative shall determine the distribution of the credit or any

remaining carryover with the initial fiduciary return filed for the estate. The determination of the distribution of credit may be changed only after obtaining the permission of the Tax Commissioner.

Source: Laws 1986, LB 1124, § 8; Laws 1993, LB 121, § 513; Laws 1994, LB 884, § 92; Laws 1997, LB 886, § 8; Laws 2003, LB 608, § 10; Laws 2005, LB 312, § 20; Laws 2006, LB 1003, § 10; Laws 2007, LB368, § 137.
Operative date January 1, 2008.

(p) CREDIT FOR BUSINESS CHILD CARE EXPENDITURES

77-27,222 Repealed. Laws 2007, LB 367, § 30.

Note: This section was amended by Laws 2007, LB 296, section 706, and repealed by Laws 2007, LB 367, section 30. The repeal became operative for taxable years beginning or deemed to begin on or after January 1, 2007, under the Internal Revenue Code of 1986, as amended, and the section has been deleted.

(s) RENEWABLE ENERGY TAX CREDIT

77-27,235 Renewable energy tax credit; Department of Revenue; Environmental Quality Council; powers. (1) Any producer of electricity generated by a new zero-emission facility shall earn a renewable energy tax credit. For electricity generated on or after July 14, 2006, and before October 1, 2007, the credit shall be .075 cent for each kilowatt-hour of electricity generated by a new zero-emission facility. For electricity generated on or after October 1, 2007, and before January 1, 2010, the credit shall be .1 cent for each kilowatt-hour of electricity generated by a new zero-emission facility. For electricity generated on or after January 1, 2010, and before January 1, 2013, the credit shall be .075 cent per kilowatt-hour for electricity generated by a new zero-emission facility. For electricity generated on or after January 1, 2013, and before January 1, 2018, the credit shall be .05 cent per kilowatt-hour for electricity generated by a new zero-emission facility. The credit may be earned for production of electricity for ten years after the date that the facility is placed in operation on or after July 14, 2006.

(2) For purposes of this section:

(a) Electricity generated by a new zero-emission facility means electricity that is exclusively produced by a new zero-emission facility;

(b) Eligible renewable resources means wind, moving water, solar, geothermal, fuel cell, methane gas, or photovoltaic technology; and

(c) New zero-emission facility means an electrical generating facility located in this state that is first placed into service on or after July 14, 2006, which utilizes eligible renewable resources as its fuel source and for which the operation of the facility results in no pollution or emissions that are or may be harmful to the environment as certified by the Department of Environmental Quality.

(3) The credit allowed under this section may be used to reduce the producer's Nebraska income tax liability or to obtain a refund of state sales and use taxes paid by the producer of electricity generated by a zero-emission facility. A claim to use the credit for refund of the state sales and use taxes paid, either directly or indirectly, by the producer may be filed

quarterly for electricity generated during the previous quarter by the twentieth day of the month following the end of the calendar quarter. The credit may be used to obtain a refund of state sales and use taxes paid during the quarter immediately preceding the quarter in which the claim for refund is made, except that the amount refunded under this subsection shall not exceed the amount of the state sales and use taxes paid during the quarter.

(4) The Department of Revenue may adopt and promulgate rules and regulations to permit verification of the validity and timeliness of any renewable energy tax credit claimed.

(5) The Environmental Quality Council may adopt and promulgate rules and regulations to certify that the operation of a new zero-emission facility results in no pollution or emissions that are or may be harmful to the environment.

(6) The total amount of renewable energy tax credits that may be used by all taxpayers shall be limited to seven hundred fifty thousand dollars without further authorization from the Legislature.

(7) The credit allowed under this section may not be claimed by a producer who received a sales tax exemption under section 77-2704.57 for the new zero-emission facility.

Source: Laws 2006, LB 872, § 2; Laws 2007, LB367, § 24.
Operative date October 1, 2007.

(t) BIODIESEL FACILITY INVESTMENT CREDIT

77-27,236 Biodiesel facility tax credit; conditions; facility; requirements; information not public record. (1) A taxpayer who makes an investment after January 1, 2008, and prior to January 1, 2015, in a biodiesel facility shall receive a nonrefundable income tax credit as provided in this section.

(2) The credit provided in subsection (1) of this section shall be equal to thirty percent of the amount invested by the taxpayer in a biodiesel facility. The credit shall be taken over at least four taxable years subject to the following conditions:

(a) No more than ten percent of the credit provided for in subsection (1) of this section shall be taken in each of the first two taxable years the biodiesel facility produces B100 and no more than fifty percent of the credit provided for in subsection (1) of this section shall be taken in the third taxable year the biodiesel facility produces B100. The credit allowed under subsection (1) of this section shall not exceed fifty percent of the taxpayer's liability in any tax year;

(b) Any amount of credit not allowed because of the limitations in this section may be carried forward for up to fifteen taxable years after the taxable year in which the investment was made. The aggregate maximum income tax credit a taxpayer may obtain is two hundred fifty thousand dollars;

(c) The investment shall be at risk in the biodiesel facility. The investment shall be in the form of a purchase of an ownership interest or the right to receive payment of dividends from the biodiesel facility and shall remain in the business for at least three years. The Tax

Commissioner may recapture any credits used if the investment does not remain invested for the three-year period. An investment placed in escrow does not qualify under this subdivision;

(d) The entire amount of the investment shall be expended by the biodiesel facility for plant, equipment, research and development, marketing and sales activity, or working capital;

(e) A partnership, a subchapter S corporation, a limited liability company that for tax purposes is treated like a partnership, a cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, or any other pass-through entity that invests in a biodiesel facility shall be considered to be the taxpayer for purposes of the credit limitations. Except for the limitation under subdivision (2)(a) of this section, the amount of the credit allowed to a pass-through entity shall be determined at the partnership, corporate, cooperative, or other organizational level. The amount of the credit determined at the partnership, corporate, cooperative, or other organizational level shall be allowed to the partners, members, or other owners in proportion to their respective ownership interests in the pass-through entity;

(f) The credit shall be taken only if (i) the biodiesel facility produces B100, (ii) the biodiesel facility in which the investment was made produces at a rate of at least seventy percent of its rated capacity continuously for at least one week during the first taxable year the credit is taken and produces at a rate of at least seventy percent of its rated capacity over a six-month period during each of the next two taxable years the credit is taken, (iii) all processing takes place at the biodiesel facility in which the investment was made and which is located in Nebraska, and (iv) at least fifty-one percent of the ownership interest of the biodiesel facility is held by Nebraska resident individuals or Nebraska entities; and

(g) The biodiesel facility shall provide the Department of Revenue written evidence substantiating that the biodiesel facility has received the requisite authority from the Department of Environmental Quality and from the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. The biodiesel facility shall annually provide an analysis to the Department of Revenue of samples of the product collected according to procedures specified by the department. The analysis shall be prepared by an independent laboratory meeting standards of the International Organization for Standardization. Prior to collecting the samples, the biodiesel facility shall notify the department which may observe the sampling procedures utilized by the biodiesel facility to obtain the samples to be submitted for independent analysis.

(3) Any biodiesel facility for which credits are granted shall, whenever possible, employ workers who are residents of the State of Nebraska.

(4) Trade secrets, academic and scientific research work, and other proprietary or commercial information which may be filed with the Tax Commissioner shall not be considered to be public records as defined in section 84-712.01 if the release of such trade secrets, work, or information would give advantage to business competitors and serve no public purpose. Any person seeking release of the trade secrets, work, or information as a public record shall demonstrate to the satisfaction of the department that the release would not violate this section.

(5) For purposes of this section:

(a) Biodiesel facility means a plant or facility related to the processing, marketing, or distribution of biodiesel; and

(b) B100 means pure biodiesel containing mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated as B100, and meeting the American Society for Testing and Materials standard, ASTM D6751.

Source: Laws 2007, LB343, § 2.
Operative date January 1, 2007.

ARTICLE 31

REGISTRATION BY NONRESIDENT CONTRACTORS

Section.

77-3102. Nonresident contractor, registration; contract, registration; exemptions.

77-3102 Nonresident contractor, registration; contract, registration; exemptions. (1) In order that the State of Nebraska and the political subdivisions thereof may receive all taxes due in every instance, including contributions due under the Employment Security Law, contractors who are nonresidents of this state, desiring to engage in, prosecute, follow, or carry on the business of contracting within this state shall register with the Tax Commissioner.

(2) Each contract to which a nonresident contractor is a party shall be registered with the Tax Commissioner, except that if the total contract price or compensation to be received is less than ten thousand dollars, the Tax Commissioner may waive the requirements of this subsection.

Source: Laws 1969, c. 637, § 2, p. 2547; Laws 2007, LB223, § 22.
Operative date January 1, 2008.

Cross Reference

Employment Security Law, see section 48-601.

ARTICLE 34

POLITICAL SUBDIVISIONS, BUDGET LIMITATIONS

(d) LIMITATION ON PROPERTY TAXES

Section.

77-3442. Property tax levies; maximum levy; exceptions.

77-3444. Authority to exceed maximum levy; procedure.

(d) LIMITATION ON PROPERTY TAXES

77-3442 Property tax levies; maximum levy; exceptions. (1) Property tax levies for the support of local governments for fiscal years beginning on or after July 1, 1998, shall be limited to the amounts set forth in this section except as provided in section 77-3444.

(2)(a) Except as provided in subdivision (2)(e) of this section, school districts and multiple-district school systems, except learning communities and school districts that are members of learning communities, may levy a maximum levy of one dollar and five cents per one hundred dollars of taxable valuation of property subject to the levy.

(b) For each fiscal year, learning communities may levy a maximum levy for the general fund budgets of member school districts equal to the local effort rate prescribed in section 79-1015.01 for such fiscal year. The proceeds from the levy pursuant to this subdivision shall be distributed pursuant to section 79-1073.

(c) Except as provided in subdivision (2)(e) of this section, for each fiscal year, school districts that are members of learning communities may levy for purposes of such districts' general fund budget and special building funds a maximum combined levy of the difference of one dollar and five cents on each one hundred dollars of taxable property subject to the levy minus the learning community levies pursuant to subdivisions (2)(b) and (2)(g) of this section for such learning community.

(d) Excluded from the limitations in subdivisions (2)(a) and (2)(c) of this section are amounts levied to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment and amounts levied to pay for special building funds and sinking funds established for projects commenced prior to April 1, 1996, for construction, expansion, or alteration of school district buildings. For purposes of this subsection, commenced means any action taken by the school board on the record which commits the board to expend district funds in planning, constructing, or carrying out the project.

(e) Federal aid school districts may exceed the maximum levy prescribed by subdivision (2)(a) or (2)(c) of this section only to the extent necessary to qualify to receive federal aid pursuant to Title VIII of Public Law 103-382, as such title existed on September 1, 2001. For purposes of this subdivision, federal aid school district means any school district which receives ten percent or more of the revenue for its general fund budget from federal government sources pursuant to Title VIII of Public Law 103-382, as such title existed on September 1, 2001.

(f) For school fiscal year 2002-03 through school fiscal year 2007-08, school districts and multiple-district school systems may, upon a three-fourths majority vote of the school board of the school district, the board of the unified system, or the school board of the high school district of the multiple-district school system that is not a unified system, exceed the maximum levy prescribed by subdivision (2)(a) of this section in an amount equal to the net difference between the amount of state aid that would have been provided under the Tax Equity and Educational Opportunities Support Act without the temporary aid adjustment factor as defined in section 79-1003 for the ensuing school fiscal year for the school district or multiple-district school system and the amount provided with the temporary aid adjustment factor. The State

Department of Education shall certify to the school districts and multiple-district school systems the amount by which the maximum levy may be exceeded for the next school fiscal year pursuant to this subdivision (f) of this subsection on or before February 15 for school fiscal years 2004-05 through 2007-08.

(g) For each fiscal year, learning communities may levy a maximum levy of two cents on each one hundred dollars of taxable property subject to the levy for special building funds for member school districts. The proceeds from the levy pursuant to this subdivision shall be distributed pursuant to section 79-1073.01.

(h) For each fiscal year, learning communities may levy a maximum levy of five cents on each one hundred dollars of taxable property subject to the levy for elementary learning center facilities and for up to fifty percent of the estimated cost for capital projects approved by the learning community coordinating council pursuant to section 79-2111.

(3) Community colleges may levy a maximum levy calculated pursuant to the Community College Foundation and Equalization Aid Act on each one hundred dollars of taxable property subject to the levy.

(4)(a) Natural resources districts may levy a maximum levy of four and one-half cents per one hundred dollars of taxable valuation of property subject to the levy.

(b) Natural resources districts shall also have the power and authority to levy a tax equal to the dollar amount by which their 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 their 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, natural resources districts located in a river basin, subbasin, or reach that has been determined to be fully appropriated pursuant to section 46-714 or designated as 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 their 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 their 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 2011-12.

(5) Educational service units may levy a maximum levy of one and one-half cents per one hundred dollars of taxable valuation of property subject to the levy.

(6)(a) Incorporated cities and villages which are not within the boundaries of a municipal county may levy a maximum levy of forty-five cents per one hundred dollars of taxable valuation of property subject to the levy plus an additional five cents per one hundred dollars

of taxable valuation to provide financing for the municipality's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to section 51-201, museum pursuant to section 51-501, visiting community nurse, home health nurse, or home health agency pursuant to section 71-1637, or statue, memorial, or monument pursuant to section 80-202.

(b) Incorporated cities and villages which are within the boundaries of a municipal county may levy a maximum levy of ninety cents per one hundred dollars of taxable valuation of property subject to the levy. The maximum levy shall include amounts paid to a municipal county for county services, amounts levied to pay for sums to support a library pursuant to section 51-201, a museum pursuant to section 51-501, a visiting community nurse, home health nurse, or home health agency pursuant to section 71-1637, or a statue, memorial, or monument pursuant to section 80-202.

(7) Sanitary and improvement districts which have been in existence for more than five years may levy a maximum levy of forty cents per one hundred dollars of taxable valuation of property subject to the levy, and sanitary and improvement districts which have been in existence for five years or less shall not have a maximum levy. Unconsolidated sanitary and improvement districts which have been in existence for more than five years and are located in a municipal county may levy a maximum of eighty-five cents per hundred dollars of taxable valuation of property subject to the levy.

(8) Counties may levy or authorize a maximum levy of fifty cents per one hundred dollars of taxable valuation of property subject to the levy, except that five cents per one hundred dollars of taxable valuation of property subject to the levy may only be levied to provide financing for the county's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to section 51-201 or museum pursuant to section 51-501. The county may allocate up to fifteen cents of its authority to other political subdivisions subject to allocation of property tax authority under subsection (1) of section 77-3443 and not specifically covered in this section to levy taxes as authorized by law which do not collectively exceed fifteen cents per one hundred dollars of taxable valuation on any parcel or item of taxable property. The county may allocate to one or more other political subdivisions subject to allocation of property tax authority by the county under subsection (1) of section 77-3443 some or all of the county's five cents per one hundred dollars of valuation authorized for support of an agreement or agreements to be levied by the political subdivision for the purpose of supporting that political subdivision's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. If an allocation by a county would cause another county to exceed its levy authority under this section, the second county may exceed the levy authority in order to levy the amount allocated.

(9) Municipal counties may levy or authorize a maximum levy of one dollar per one hundred dollars of taxable valuation of property subject to the levy. The municipal county

may allocate levy authority to any political subdivision or entity subject to allocation under section 77-3443.

(10) Property tax levies for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a political subdivision which require or obligate a political subdivision to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a political subdivision, for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property, and for payments 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 are not included in the levy limits established by this section.

(11) The limitations on tax levies provided in this section are to include all other general or special levies provided by law. Notwithstanding other provisions of law, the only exceptions to the limits in this section are those provided by or authorized by sections 77-3442 to 77-3444.

(12) Tax levies in excess of the limitations in this section shall be considered unauthorized levies under section 77-1606 unless approved under section 77-3444.

(13) For purposes of sections 77-3442 to 77-3444, political subdivision means a political subdivision of this state and a county agricultural society.

Source: Laws 1996, LB 1114, § 1; Laws 1997, LB 269, § 56; Laws 1998, LB 306, § 36; Laws 1998, LB 1104, § 17; Laws 1999, LB 87, § 87; Laws 1999, LB 141, § 11; Laws 1999, LB 437, § 26; Laws 2001, LB 142, § 57; Laws 2002, LB 568, § 9; Laws 2002, LB 898, § 1; Laws 2002, LB 1085, § 19; Laws 2003, LB 540, § 2; Laws 2004, LB 962, § 110; Laws 2004, LB 1093, § 1; Laws 2005, LB 38, § 2; Laws 2006, LB 968, § 12; Laws 2006, LB 1024, § 14; Laws 2006, LB 1226, § 30; Laws 2007, LB342, § 31; Laws 2007, LB641, § 4; Laws 2007, LB701, § 33.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 342, section 31, with LB 641, section 4, and LB 701, section 33, to reflect all amendments.

Note: The changes made by LB 701 became effective May 2, 2007. The changes made by LB 342 became operative July 1, 2007. The changes made by LB 641 became effective September 1, 2007.

Cross Reference

Community College Foundation and Equalization Act, see section 85-2201.

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Nebraska Ground Water Management and Protection Act, see section 46-701.

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

77-3444 Authority to exceed maximum levy; procedure. (1) A political subdivision, other than a Class I school district, may exceed the limits provided in section 77-3442 or a final levy allocation determination as provided in section 77-3443 by an amount not to exceed a maximum levy approved by a majority of registered voters voting on the issue in a primary, general, or special election at which the issue is placed before the registered voters. A vote to exceed the limits provided in section 77-3442 or a final levy allocation as provided in section 77-3443 must be approved prior to October 10 of the fiscal year which is to be the first to exceed the limits or final levy allocation. The governing body of the political subdivision may call for the submission of the issue to the voters (a) by passing a resolution calling for exceeding the limits or final levy allocation by a vote of at least two-thirds of the

members of the governing body and delivering a copy of the resolution to the county clerk or election commissioner of every county which contains all or part of the political subdivision or (b) upon receipt of a petition by the county clerk or election commissioner of every county containing all or part of the political subdivision requesting an election signed by at least five percent of the registered voters residing in the political subdivision. The resolution or petition shall include the amount of levy which would be imposed in excess of the limits provided in section 77-3442 or the final levy allocation as provided in section 77-3443 and the duration of the excess levy authority. The excess levy authority shall not have a duration greater than five years. Any resolution or petition calling for a special election shall be filed with the county clerk or election commissioner no later than thirty days prior to the date of the election, and the time of publication and providing a copy of the notice of election required in section 32-802 shall be no later than twenty days prior to the election. The county clerk or election commissioner shall place the issue on the ballot at an election as called for in the resolution or petition which is at least thirty days after receipt of the resolution or petition. The election shall be held pursuant to the Election Act. For petitions filed with the county clerk or election commissioner on or after May 1, 1998, the petition shall be in the form as provided in sections 32-628 to 32-631. Any excess levy authority approved under this section shall terminate pursuant to its terms, on a vote of the governing body of the political subdivision to terminate the authority to levy more than the limits, at the end of the fourth fiscal year following the first year in which the levy exceeded the limit or the final levy allocation, or as provided in subsection (4) of this section, whichever is earliest. A governing body may pass no more than one resolution calling for an election pursuant to this section during any one calendar year. Only one election may be held in any one calendar year pursuant to a petition initiated under this section.

(2) The ballot question may include any terms and conditions set forth in the resolution or petition and shall include the following: "Shall (name of political subdivision) be allowed to levy a property tax not to exceed cents per one hundred dollars of taxable valuation in excess of the limits prescribed by law until fiscal year for the purposes of (general operations; building construction, remodeling, or site acquisition; or both general operations and building construction, remodeling, or site acquisition)?" If a majority of the votes cast upon the ballot question are in favor of such tax, the county board shall authorize a tax in excess of the limits in section 77-3442 or the final levy allocation in section 77-3443 but such tax shall not exceed the amount stated in the ballot question. If a majority of those voting on the ballot question are opposed to such tax, the governing body of the political subdivision shall not impose such tax.

(3) In lieu of the election procedures in subsection (1) of this section, any political subdivision subject to section 77-3443, other than a Class I school district, and villages may approve a levy in excess of the limits in section 77-3442 or the final levy allocation provided in section 77-3443 for a period of one year at a meeting of the residents of the political subdivision or village, called after notice is published in a newspaper of general circulation in the political subdivision or village at least twenty days prior to the meeting. At least ten

percent of the registered voters residing in the political subdivision or village shall constitute a quorum for purposes of taking action to exceed the limits or final levy allocation. A record shall be made of the registered voters residing in the political subdivision or village who are present at the meeting. The method of voting at the meeting shall protect the secrecy of the ballot. If a majority of the registered voters present at the meeting vote in favor of exceeding the limits or final levy allocation, a copy of the record of that action shall be forwarded to the county board prior to October 10 and the county board shall authorize a levy as approved by the residents for the year. If a majority of the registered voters present at the meeting vote against exceeding the limits or final allocation, the limit or allocation shall not be exceeded and the political subdivision shall have no power to call for an election under subsection (1) of this section.

(4) A political subdivision, other than a Class I school district, may rescind or modify a previously approved excess levy authority prior to its expiration by a majority of registered voters voting on the issue in a primary, general, or special election at which the issue is placed before the registered voters. A vote to rescind or modify must be approved prior to October 10 of the fiscal year for which it is to be effective. The governing body of the political subdivision may call for the submission of the issue to the voters (a) by passing a resolution calling for the rescission or modification by a vote of at least two-thirds of the members of the governing body and delivering a copy of the resolution to the county clerk or election commissioner of every county which contains all or part of the political subdivision or (b) upon receipt of a petition by the county clerk or election commissioner of every county containing all or part of the political subdivision requesting an election signed by at least five percent of the registered voters residing in the political subdivision. The resolution or petition shall include the amount and the duration of the previously approved excess levy authority and a statement that either such excess levy authority will be rescinded or such excess levy authority will be modified. If the excess levy authority will be modified, the amount and duration of such modification shall be stated. The modification shall not have a duration greater than five years. The county clerk or election commissioner shall place the issue on the ballot at an election as called for in the resolution or petition which is at least thirty days after receipt of the resolution or petition, and the time of publication and providing a copy of the notice of election required in section 32-802 shall be no later than twenty days prior to the election. The election shall be held pursuant to the Election Act.

(5) For purposes of this section, when the political subdivision is a sanitary and improvement district, registered voter means a person qualified to vote as provided in section 31-735. Any election conducted under this section for a sanitary and improvement district shall be conducted and counted as provided in sections 31-735 to 31-735.06.

(6) For purposes of this section, when the political subdivision is a school district or a multiple-district school system, registered voter includes both (a) persons qualified to vote for the members of the school board of the school district which is voting to exceed the maximum levy limits pursuant to this section and (b) persons in those portions of any Class I district

which are affiliated with or a part of the school district which is voting pursuant to this section, if such voter is also qualified to vote for the school board of the affected Class I school district.

Source: Laws 1996, LB 1114, § 3; Laws 1997, LB 269, § 58; Laws 1997, LB 343, § 1; Laws 1997, LB 806, § 4; Laws 1998, LB 306, § 38; Laws 1998, LB 1104, § 18; Laws 1999, LB 141, § 13; Laws 2007, LB289, § 1.
Effective date September 1, 2007.

Cross Reference

Election Act, see section 32-101.

ARTICLE 35

HOMESTEAD EXEMPTION

Section.

77-3504. Household income, defined.

77-3510. Homesteads; exemptions; transfers; claimants; forms; contents; county assessor; furnish; confidentiality.

77-3513. Homestead; exemption; filing requirements; notice; contents.

77-3514. Homestead; exemption; certification of status; notice; failure to certify; penalty; lien.

77-3504 Household income, defined. Household income means the total federal adjusted gross income, as defined in the Internal Revenue Code, plus (1) any Nebraska adjustments increasing the total federal adjusted gross income, (2) any interest or dividends received by the owner regarding obligations of the State of Nebraska or any political subdivision, authority, commission, or instrumentality thereof to the extent excluded in the computation of gross income for federal income tax purposes, and (3) any social security or railroad retirement benefit to the extent excluded in the computation of gross income for federal income tax purposes, of the claimant and spouse, and any additional owners who are natural persons and who occupy the homestead, for the taxable year of the claimant immediately prior to the year for which the claim for exemption is made, less all medical expenses actually incurred and paid by the claimant, his or her spouse, or any owner-occupant which are in excess of four percent of household income calculated prior to the deduction for medical expenses. For purposes of this section, medical expenses means the costs of health insurance premiums and the costs of goods and services purchased from a person licensed under the Uniform Credentialing Act or a health care facility or health care service licensed under the Health Care Facility Licensure Act for purposes of restoring or maintaining health, including insulin and prescription medicine, but not including nonprescription medicine.

Source: Laws 1979, LB 65, § 4; Laws 1987, LB 376A, § 3; Laws 1988, LB 1105, § 1; Laws 1994, LB 902, § 26; Laws 1995, LB 574, § 74; Laws 1996, LB 1039, § 3; Laws 2000, LB 819, § 152; Laws 2007, LB463, § 1309.
Operative date December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

Uniform Credentialing Act, see section 38-101.

77-3510 Homesteads; exemptions; transfers; claimants; forms; contents; county assessor; furnish; confidentiality. On or before February 1 of each year, the Tax Commissioner shall prescribe forms to be used by all claimants for homestead exemption or for transfer of homestead exemption. Such forms shall contain provisions for the showing of all information which the Tax Commissioner may deem necessary to (1) enable the county officials and the Tax Commissioner to determine whether each claim for exemption under sections 77-3507 to 77-3509 should be allowed and (2) enable the county assessor to determine whether each claim for transfer of homestead exemption pursuant to section 77-3509.01 should be allowed. It shall be the duty of the county assessor of each county in this state to furnish such forms, upon request, to each person desiring to make application for homestead exemption or for transfer of homestead exemption. The forms so prescribed shall be used uniformly throughout the state, and no application for exemption or for transfer of homestead exemption shall be allowed unless the applicant uses the prescribed form in making an application. The forms shall require the attachment of an income statement as prescribed by the Tax Commissioner fully accounting for all household income. The Tax Commissioner shall provide to each county assessor printed claim forms and address lists of applicants from the prior year. The application and information contained on any attachments to the application shall be confidential and available to tax officials only.

Source: Laws 1979, LB 65, § 10; Laws 1983, LB 494, § 2; Laws 1983, LB 396, § 1; Laws 1984, LB 809, § 6; Laws 1985, Second Spec. Sess., LB 6, § 3; Laws 1986, LB 1258, § 4; Laws 1987, LB 376A, § 8; Laws 1989, LB 84, § 10; Laws 1991, LB 9, § 4; Laws 1994, LB 902, § 36; Laws 1995, LB 135, § 1; Laws 1996, LB 921, § 3; Laws 1997, LB 397, § 26; Laws 2003, LB 192, § 1; Laws 2007, LB 145, § 1.
Effective date September 1, 2007.

77-3513 Homestead; exemption; filing requirements; notice; contents. (1) Except as required by section 77-3514, if an owner is granted a homestead exemption as provided in section 77-3507 or 77-3509 or subdivision (1)(b)(ii) or (iii) of section 77-3508, no reapplication need be filed for succeeding years, in which case the county assessor and Tax Commissioner shall determine whether the claimant qualifies for the homestead exemption in such succeeding years as otherwise provided in sections 77-3501 to 77-3529 as though a claim were made.

(2) It shall be the duty of each claimant who wants the homestead exemption provided in subdivision (1)(b)(i) of section 77-3508 to file an application therefor with the county assessor on or before June 30 of each year. Failure to do so shall constitute a waiver of the exemption for such year, except that the county board of the county in which the homestead is located may, by majority vote, extend the deadline to on or before July 20 of each year. An extension shall not be granted to an applicant who received an extension in the immediately preceding year. The county assessor shall mail a notice on or before April 1 to claimants who are the owners of a homestead which was granted an exemption under subdivision (1)(b)(i) of section 77-3508 in the preceding year unless the claimant has already filed the application

for the current year or the county assessor has reason to believe there has been a change of circumstances so that the claimant no longer qualifies. The notice shall include the claimant's name, the application deadlines for the current year, a list of documents that must be filed with the application, and the county assessor's office address and telephone number.

Source: Laws 1979, LB 65, § 13; Laws 1980, LB 647, § 8; Laws 1983, LB 195, § 6; Laws 1983, LB 396, § 3; Laws 1984, LB 809, § 9; Laws 1985, Second Spec. Sess., LB 6, § 5; Laws 1986, LB 1258, § 6; Laws 1987, LB 376A, § 10; Laws 1991, LB 773, § 22; Laws 1994, LB 902, § 38; Laws 1995, LB 133, § 2; Laws 1996, LB 1039, § 6; Laws 1997, LB 397, § 28; Laws 1999, LB 179, § 4; Laws 2005, LB 54, § 19; Laws 2007, LB145, § 2.
Effective date September 1, 2007.

77-3514 Homestead; exemption; certification of status; notice; failure to certify; penalty; lien. A claimant who is the owner of a homestead which has been granted an exemption under sections 77-3507 to 77-3509, except subdivision (1)(b)(i) of section 77-3508, shall certify to the county assessor on or before June 30 of each year that a change in the homestead exemption status has occurred or that no change in the homestead exemption status has occurred. The county board of the county in which the homestead is located may, by majority vote, extend the deadline to on or before July 20 of each year. An extension shall not be granted to an applicant who received an extension in the immediately preceding year. The county assessor shall mail a notice on or before April 1 to claimants who are the owners of a homestead which has been granted an exemption under sections 77-3507 to 77-3509, except subdivision (1)(b)(i) of section 77-3508, in the preceding year unless the claimant has already filed the certification for the current year or the county assessor has reason to believe there has been a change of circumstances so that the claimant no longer qualifies. The notice shall include the claimant's name, the certification deadlines for the current year, a list of documents that must be filed with the certification, and the county assessor's office address and telephone number. For purposes of this section, change in the homestead exemption status shall include any change in the name of the owner, ownership, residence, occupancy, marital status, veteran status, or rating by the United States Department of Veterans Affairs or any other change that would affect the qualification for or type of exemption granted, except income checked by the Tax Commissioner under section 77-3517. The certificate shall require the attachment of an income statement as prescribed by the Tax Commissioner fully accounting for all household income. The certification and the information contained on any attachments to the certification shall be confidential and available to tax officials only. In addition, a claimant who is the owner of a homestead which has been granted an exemption under sections 77-3507 to 77-3509 may notify the county assessor by August 15 of each year of any change in the homestead exemption status occurring in the preceding portion of the calendar year as a result of a transfer of the homestead exemption pursuant to sections 77-3509.01 and 77-3509.02. If by his or her failure to give such notice any property owner permits the allowance of the homestead exemption for any year, or in the year of application in the case of transfers pursuant to sections 77-3509.01 and 77-3509.02, after the homestead exemption status of such property has changed, an amount equal to the amount of the taxes lawfully due but not paid by reason of such unlawful and improper allowance of homestead

exemption, together with penalty and interest on such total sum as provided by statute on delinquent ad valorem taxes, shall be due and shall upon entry of the amount thereof on the books of the county treasurer be a lien on such property while unpaid. Such lien may be enforced in the manner provided for liens for other delinquent taxes. Any person who has permitted the improper and unlawful allowance of such homestead exemption on his or her property shall, as an additional penalty, also forfeit his or her right to a homestead exemption on any property in this state for the two succeeding years.

Source: Laws 1979, LB 65, § 14; Laws 1983, LB 494, § 4; Laws 1983, LB 195, § 7; Laws 1983, LB 396, § 4; Laws 1984, LB 809, § 10; Laws 1985, Second Spec. Sess., LB 6, § 6; Laws 1987, LB 376A, § 11; Laws 1988, LB 834, § 3; Laws 1988, LB 1105, § 5; Laws 1991, LB 2, § 18; Laws 1991, LB 773, § 23; Laws 1994, LB 902, § 39; Laws 1995, LB 133, § 3; Laws 1995, LB 135, § 2; Laws 1996, LB 1039, § 7; Laws 1997, LB 397, § 29; Laws 2005, LB 54, § 20; Laws 2007, LB 145, § 3.
Effective date September 1, 2007.

ARTICLE 38

FINANCIAL INSTITUTION TAXATION

Section.

77-3806. Franchise tax; filing requirements; general provisions applicable; refunds; credit.

77-3807. Tax Commissioner; powers and duties.

77-3806 Franchise tax; filing requirements; general provisions applicable; refunds; credit. (1) The tax return shall be filed and the total amount of the franchise tax shall be due on the fifteenth day of the third month after the end of the taxable year. No extension of time to pay the tax shall be granted. If the Tax Commissioner determines that the amount of tax can be computed from available information filed by the financial institutions with either state or federal regulatory agencies, the Tax Commissioner may, by regulation, waive the requirement for the financial institutions to file returns.

(2) Sections 77-2714 to 77-27,135 relating to deficiencies, penalties, interest, the collection of delinquent amounts, and appeal procedures for the tax imposed by section 77-2734.02 shall also apply to the tax imposed by section 77-3802. If the filing of a return is waived by the Tax Commissioner, the payment of the tax shall be considered the filing of a return for purposes of sections 77-2714 to 77-27,135.

(3) No refund of the tax imposed by section 77-3802 shall be allowed unless a claim for such refund is filed within ninety days of the date on which (a) the tax is due or was paid, whichever is later, or (b) a change is made to the amount of deposits or the net financial income of the financial institution by a state or federal regulatory agency.

(4) Any such financial institution shall receive a credit on the franchise tax as provided under the Community Development Assistance Act.

Source: Laws 1986, LB 774, § 6; Laws 1990, LB 1241, § 16; Laws 2001, LB 433, § 7; Laws 2007, LB 367, § 25.
Operative date January 1, 2007.

Cross Reference

Community Development Assistance Act, see section 13-201.

77-3807 Tax Commissioner; powers and duties. (1) The Tax Commissioner shall prescribe the necessary forms and the supporting documentation to be filed for the reporting and payment of the tax imposed by section 77-3802 and for the calculation of credits allowable under subsection (6) of section 77-2715.07.

(2) The Tax Commissioner shall adopt and promulgate rules and regulations to carry out sections 77-3801 to 77-3807.

(3) The Tax Commissioner may use electronic funds transfers to collect the tax imposed by section 77-3802 or to pay any refunds allowed under section 77-3806. The use of electronic funds transfers shall not change the rights of any party from the rights such party would have if a different method of payment is used.

Source: Laws 1986, LB 774, § 7; Laws 2007, LB456, § 3.
Effective date September 1, 2007.

ARTICLE 39**UNIFORM STATE TAX LIEN REGISTRATION AND ENFORCEMENT**

Section.

77-3902. Terms, defined.

77-3903. Notice of lien; filing; requirements; fee.

77-3904. Failure to pay tax or fee; lien; procedures; priority; extension; termination; release or subordination.

77-3905. Action to collect delinquent amount; procedures; evidence; satisfaction of amount; trust fund; when constituted.

77-3906. Distraint and sale of taxpayer's property; procedures; conditions; powers and duties.

77-3907. Demand upon security; authorized; abatement; when.

77-3908. Actions prohibited; construction of act.

77-3902 Terms, defined. For purposes of the Uniform State Tax Lien Registration and Enforcement Act:

(1) Appropriate filing officer means (a) with respect to real property subject to a tax lien, the register of deeds of the county or counties in which the real property is situated and (b) with respect to personal property subject to a tax lien, the Secretary of State; and

(2) Any reference to tax, taxes, fee, or tax program shall be construed to include any tax, fee, or in-lieu-of-tax contribution which is imposed by the laws of this state and administered or collected and enforced by the Tax Commissioner or Commissioner of Labor, unless a tax lien is otherwise provided for by law.

Source: Laws 1986, LB 1027, § 215; Laws 1987, LB 523, § 31; Laws 1995, LB 490, § 178; Laws 1998, LB 1321, § 99; Laws 1999, LB 165, § 3; Laws 1999, LB 550, § 45; Laws 2007, LB334, § 88.
Operative date July 1, 2007.

77-3903 Notice of lien; filing; requirements; fee. (1)(a) A notice of lien provided for in the Uniform State Tax Lien Registration and Enforcement Act upon real property shall be presented in the office of the Secretary of State. Such notice of lien shall be transmitted by the Secretary of State to and filed in the office of the register of deeds by the register of deeds of the county or counties in which the real property subject to the lien is situated as designated in the notice of lien. The register of deeds shall enter the notice in the alphabetical state tax lien index, showing on one line the name and residence of the person liable named in such notice, the last four digits of the social security number or the federal tax identification number of such person, the Tax Commissioner's or Commissioner of Labor's serial number of such notice, the date and hour of filing, and the amount due. Such presentments to the Secretary of State may be made by direct input to the Secretary of State's data base or by other electronic means. All such notices of lien shall be retained in numerical order in a file designated state tax lien notices, except that in offices filing by the roll form of microfilm pursuant to section 23-1517.01, the original notices need not be retained. A lien subject to this subsection shall be effective upon real property when filed by the register of deeds as provided in this subsection.

(b) A notice of lien provided for in the Uniform State Tax Lien Registration and Enforcement Act upon personal property shall be filed in the office of the Secretary of State. The Secretary of State shall enter the notice in the state's central tax lien index, showing on one line the name and residence of the person liable named in such notice, the last four digits of the social security number or the federal tax identification number of such person, the Tax Commissioner's or Commissioner of Labor's serial number of such notice, the date and hour of filing, and the amount due. Such filings with the Secretary of State may be filed by direct input to the Secretary of State's data base or by other electronic means. All such notices of lien shall be retained in numerical order in a file designated state tax lien notices.

(2) Beginning July 1, 1999, the uniform fee, payable to the Secretary of State, for presenting for filing, releasing, continuing, or subordinating or for filing, releasing, continuing, or subordinating each tax lien pursuant to the Uniform State Tax Lien Registration and Enforcement Act shall be six dollars. There shall be no fee for the filing of a termination statement. The uniform fee for each county more than one designated pursuant to subdivision (1)(a) of this section shall be three dollars. The Secretary of State shall deposit each fee received pursuant to this section in the Uniform Commercial Code Cash Fund. Of the fees received and deposited pursuant to this section, the Secretary of State shall remit three dollars to the register of deeds of a county for each designation of such county in a filing pursuant to subdivision (1)(a) of this section.

(3) The Secretary of State shall bill the Tax Commissioner or Commissioner of Labor on a monthly basis for fees for documents presented to or filed with the Secretary of State. No payment of any fee shall be required at the time of presenting or filing any such lien document.

Source: Laws 1986, LB 1027, § 216; Laws 1987, LB 523, § 32; Laws 1995, LB 490, § 179; Laws 1998, LB 1321, § 100; Laws 1999, LB 165, § 4; Laws 1999, LB 550, § 46; Laws 2007, LB223, § 23; Laws 2007, LB334, § 89.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 223, section 23, with LB 334, section 89, to reflect all amendments.

Note: The changes made by LB 334 became operative July 1, 2007. The changes made by LB 223 became operative January 1, 2008.

77-3904 Failure to pay tax or fee; lien; procedures; priority; extension; termination; release or subordination. (1) If any person liable to pay any tax or fee under any tax program administered by the Tax Commissioner or Commissioner of Labor neglects or refuses to pay such tax or fee after demand, the amount of such tax or fee, including any interest, penalty, and additions to such tax and such additional costs that may accrue, shall be a lien in favor of the State of Nebraska upon all property and rights to property, whether real or personal, then owned by such person or acquired by him or her thereafter and prior to the expiration of the lien. Unless another date is specifically provided by law, such lien shall arise at the time of the assessment and shall remain in effect (a) for three years from the time of the assessment if the notice of lien is not filed for record in the office of the appropriate filing officer, (b) for ten years from the time of filing for record in the office of the appropriate filing officer, or (c) until such amounts have been paid or a judgment against such person arising out of such liability has been satisfied or has become unenforceable by reason of lapse of time, unless a continuation statement is filed prior to the lapse.

(2)(a) The Tax Commissioner or Commissioner of Labor may present for filing or file for record in the office of the appropriate filing officer a notice of lien specifying the year the tax was due, the tax program, and the amount of the tax and any interest, penalty, or addition to such tax that are due. Such notice shall be filed for record in the office of the appropriate filing officer within three years after the time of assessment. Such notice shall contain the name and last-known address of the taxpayer, the last four digits of the taxpayer's social security number or federal identification number, the Tax Commissioner's or Commissioner of Labor's serial number, and a statement to the effect that the Tax Commissioner or Commissioner of Labor has complied with all provisions of the law for the particular tax program which he or she administers in the determination of the amount of the tax and any interest, penalty, and addition to such tax required to be paid.

(b) If the assets of the taxpayer are in the control or custody of the court in any proceeding before any court of the United States or of any state or the District of Columbia, before the end of the three-year period in subdivision (2)(a) of this section, the notice shall be filed for record within the three-year period or within six months after the assets are released by the court, whichever is later.

(3)(a)(i) A lien imposed upon real property pursuant to the Uniform State Tax Lien Registration and Enforcement Act shall be valid against any subsequent creditor when notice of such lien and the amount due has been presented for filing by the Tax Commissioner or Commissioner of Labor in the office of the Secretary of State and filed in the office of the register of deeds.

(ii) A lien imposed upon personal property pursuant to the Uniform State Tax Lien Registration and Enforcement Act shall be valid against any subsequent creditor when notice

of such lien and the amount due has been filed by the Tax Commissioner or Commissioner of Labor in the office of the Secretary of State.

(b) In the case of any prior mortgage on real property or secured transaction covering personal property so written as to secure a present debt and future advances, the lien provided in the act, when notice thereof has been filed in the office of the appropriate filing officer, shall be subject to such prior lien unless the Tax Commissioner or Commissioner of Labor has notified the lienholder in writing of the recording of such tax lien, in which case the lien of any indebtedness thereafter created under such mortgage or secured transaction shall be junior to the lien provided for in the act.

(4) The lien may, within ten years from the date of filing for record of the notice of lien in the office of the appropriate filing officer, be extended by filing for record a continuation statement. Upon timely filing of the continuation statement, the effectiveness of the original notice shall be continued for ten years after the last date to which the filing was effective. After such period the notice shall lapse in the manner prescribed in subsection (1) of this section unless another continuation statement is filed prior to such lapse.

(5) When a termination statement of any tax lien issued by the Tax Commissioner or Commissioner of Labor is filed in the office where the notice of lien is filed, the appropriate filing officer shall enter such statement with the date of filing in the state tax lien index where notice of the lien so terminated is entered and shall file the termination statement with the notice of the lien.

(6) The Tax Commissioner or Commissioner of Labor may at any time, upon request of any party involved, release from a lien all or any portion of the property subject to any lien provided for in the Uniform State Tax Lien Registration and Enforcement Act or subordinate a lien to other liens and encumbrances if he or she determines that (a) the tax amount and any interest, penalties, and additions to such tax have been paid or secured sufficiently by a lien on other property, (b) the lien has become legally unenforceable, (c) a surety bond or other satisfactory security has been posted, deposited, or pledged with the Tax Commissioner or Commissioner of Labor in an amount sufficient to secure the payment of such taxes and any interest, penalties, and additions to such taxes, or (d) the release, partial release, or subordination of the lien will not jeopardize the collection of such taxes and any interest, penalties, and additions to such tax.

(7) A certificate by the Tax Commissioner or Commissioner of Labor stating that any property has been released from the lien or the lien has been subordinated to other liens and encumbrances shall be conclusive evidence that the property has in fact been released or the lien has been subordinated pursuant to the certificate.

Source: Laws 1986, LB 1027, § 217; Laws 1987, LB 523, § 33; Laws 1993, LB 345, § 75; Laws 1995, LB 490, § 180; Laws 1999, LB 165, § 5; Laws 1999, LB 550, § 47; Laws 2007, LB223, § 24; Laws 2007, LB334, § 90.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 223, section 24, with LB 334, section 90, to reflect all amendments.

Note: The changes made by LB 334 became operative July 1, 2007. The changes made by LB 223 became operative January 1, 2008.

77-3905 Action to collect delinquent amount; procedures; evidence; satisfaction of amount; trust fund; when constituted. (1) At any time within three years after any amount of tax to be collected under any tax program administered by the Tax Commissioner or Commissioner of Labor is assessed or within ten years after the last filing for record as set forth in the Uniform State Tax Lien Registration and Enforcement Act, the Tax Commissioner or Commissioner of Labor may bring an action in the courts of this state, any other state, or the United States in the name of the people of the State of Nebraska to collect the delinquent amount together with penalties, any additions to such tax, costs, and interest.

(2)(a) The Attorney General shall prosecute the action on behalf of the Tax Commissioner, (b) the Commissioner of Labor shall be represented in an action under the act as provided in section 48-667, and (c) the rules of civil procedure relating to service of summons, pleadings, proofs, trials, and appeals shall be applicable to the proceedings.

(3) In the action, a writ of attachment may issue, and no bond or affidavit previous to the issuing of the attachment shall be required.

(4) In the action, a certificate by the Tax Commissioner or Commissioner of Labor showing the delinquency shall be prima facie evidence of the determination of such tax or the amount of such tax, the delinquency of the amounts set forth, and the compliance by the Tax Commissioner or Commissioner of Labor with all provisions of the applicable tax program which he or she administers in relation to the computation and determination of the amounts set forth.

(5) The tax amounts required to be paid by any person under any tax program administered by the Tax Commissioner or Commissioner of Labor together with any interest, penalties, and additions to such tax shall be satisfied first in any of the following cases: When the person is insolvent; when the person makes a voluntary assignment of his or her assets; when the estate of the person in the hands of executors, personal representatives, administrators, or heirs is insufficient to pay all the debts due from the deceased; or when the estate and effects of an absconding, concealed, or absent person required to pay any amount under any tax program administered by the Tax Commissioner or Commissioner of Labor are levied upon by process of law.

(6) Any tax which by law must be deducted and withheld by an employer or payor or is collected by a retailer or any other designated person as agent for the State of Nebraska on any transaction governed by a tax program administered by the Tax Commissioner or Commissioner of Labor shall constitute a trust fund in the hands of the employer, payor, or retailer or such other designated person and shall be owned by the state as of the time the tax is deducted and withheld or is owing to the employer, payor, or retailer or such other designated person.

Source: Laws 1986, LB 1027, § 218; Laws 1987, LB 523, § 34; Laws 1993, LB 345, § 76; Laws 1995, LB 490, § 181; Laws 1999, LB 165, § 6; Laws 2007, LB334, § 91.
Operative date July 1, 2007.

77-3906 Distraint and sale of taxpayer's property; procedures; conditions; powers and duties. (1) In addition to all other remedies or actions provided by law under any tax program administered by the Tax Commissioner or Commissioner of Labor, it shall be lawful for the Tax Commissioner or Commissioner of Labor, after making demand for payment, to collect any delinquent taxes, together with any interest, penalties, and additions to such tax by distraint and sale of the real and personal property of the taxpayer. If the Tax Commissioner finds that the collection of any tax is in jeopardy pursuant to section 77-2710, 77-27,111, or 77-4311, notice and demand for immediate payment of such tax may be made by the Tax Commissioner and, upon failure or refusal to pay such tax, collection by levy shall be lawful.

(2)(a) In case of failure to pay taxes or deficiencies, the Tax Commissioner, or his or her authorized employee, may levy or, by warrant issued under his or her own hand, authorize a sheriff or duly authorized employee of the Tax Commissioner to levy upon, seize, and sell such real and personal property belonging to the taxpayer, except exempt property, as is necessary to satisfy the liability for the payment of the amount due.

(b) In case of failure to pay taxes or deficiencies, the Commissioner of Labor, or his or her authorized employee, may levy or, by warrant issued under his or her own hand, authorize a sheriff or duly authorized employee of the Department of Labor to levy upon, seize, and sell such real and personal property belonging to the taxpayer, except exempt property, as is necessary to satisfy the liability for the payment of the amount due.

(c) As used in this section, exempt property shall mean such property as is exempt from execution under the laws of this state.

(3) When a warrant is issued or a levy is made by the Tax Commissioner or Commissioner of Labor, or his or her duly authorized employee, for the collection of any tax and any interest, penalty, or addition to such tax imposed by law under any tax program administered by the Tax Commissioner or Commissioner of Labor or for the enforcement of any tax lien authorized by the Uniform State Tax Lien Registration and Enforcement Act, such warrant or levy shall have the same force and effect of a levy and sale pursuant to a writ of execution. Such warrant or levy may be issued and sale made pursuant to it in the same manner and with the same force and effect of a levy and sale pursuant to a writ of execution. The Tax Commissioner or Commissioner of Labor shall pay the levying sheriff the same fees, commissions, and expenses pursuant to such warrant as are provided by law for similar services pursuant to a writ of execution, except that fees for publications in a newspaper shall be subject to approval by the Tax Commissioner or Commissioner of Labor. Such fees, commissions, and expenses shall be an obligation of the taxpayer and may be collected from the taxpayer by virtue of the warrant. Any such warrant shall show the name and last-known address of the taxpayer, the identity of the tax program, the year for which such tax and any interest, penalty, or addition to such tax is due and the amount thereof, the fact that the Tax Commissioner or Commissioner of Labor has complied with all provisions of the law for the applicable tax program which he or she administers in the determination of the amount

required to be paid, and that the tax and any interest, penalty, or addition to such tax is due and payable according to law.

(4)(a) Any person upon whom a levy is served who fails or refuses to honor the levy without cause may be held liable for the amount of the levy up to the value of the assets of the taxpayer under his or her control at the time the levy was served or thereafter. Such person may be subject to collection provisions as set forth in the act.

(b) The effect of a levy on salary, wages, or other regular payments due to or received by a taxpayer shall be continuous from the date the levy is served until the amount of the levy, with accrued interest, is satisfied.

(5) Notice of the sale and the time and place of the sale shall be given, to the delinquent taxpayer and to any other person with an interest in the property who has filed for record with the appropriate filing officer on such property, in writing at least twenty days prior to the date of such sale in the following manner: The notice shall be sent by certified mail, return receipt requested, to the taxpayer and to any other person with such interest at his or her last-known residence or place of business in this state. The notice shall also be given by publication at least once each week for four weeks prior to the date of the sale in the newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county twenty days prior to the date of the sale. The notice shall contain a description of the property to be sold, a statement of the type of tax due and of the amount due, including interest, penalties, additions to tax, and costs, the name of the delinquent taxpayer, and the further statement that unless the amount due, including interest, penalties, additions to tax, and costs, is paid on or before the time fixed in the notice for the sale or such security as may be determined by the Tax Commissioner or Commissioner of Labor is placed with the Tax Commissioner or Commissioner of Labor, or his or her duly authorized representative, on or before such time, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

(6) At the sale the Tax Commissioner or Commissioner of Labor, or his or her duly authorized representative, shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for the property. The bill of sale shall vest the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized shall remain in the custody and control of the Tax Commissioner or Commissioner of Labor, or his or her duly authorized representative, until offered for sale again in accordance with this section or redeemed by the taxpayer.

(7) Whenever any property which is seized and sold under this section is not sufficient to satisfy the claim of the state for which distraint or seizure is made, the sheriff or duly authorized employee of the Tax Commissioner or Department of Labor may thereafter, and as often as the same may be necessary, proceed to seize and sell in like manner any other property liable to seizure of the taxpayer against whom such claim exists until the amount due from such taxpayer, together with all expenses, is fully paid.

(8) If after the sale the money received exceeds the total of all amounts due the state, including any interest, penalties, additions to tax, and costs, and if there is no other interest in or lien upon such money received, the Tax Commissioner or Commissioner of Labor shall return the excess to the person liable for the amounts and obtain a receipt. If any person having an interest or lien upon the property files with the Tax Commissioner or Commissioner of Labor prior to the sale notice of his or her interest or lien, the Tax Commissioner or Commissioner of Labor shall withhold any excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the person liable for the amount is not available, the Tax Commissioner or Commissioner of Labor shall deposit the excess money with the State Treasurer, as trustee for the owner, subject to the order of the person liable for the amount or his or her heirs, successors, or assigns. No interest earned, if any, shall become the property of the person liable for the amount.

(9) All persons and officers of companies or corporations shall, on demand of a sheriff or duly authorized employee of the Tax Commissioner or Department of Labor about to distrain or having distrained any property or right to property, exhibit all books containing evidence or statements relating to the property or rights of property liable to distraint for the tax due.

Source: Laws 1986, LB 1027, § 219; Laws 1990, LB 260, § 17; Laws 1993, LB 345, § 77; Laws 1995, LB 490, § 182; Laws 1999, LB 36, § 33; Laws 1999, LB 165, § 7; Laws 2007, LB334, § 92.
Operative date July 1, 2007.

77-3907 Demand upon security; authorized; abatement; when. (1) To enforce collection of any tax not paid when due, the Tax Commissioner or Commissioner of Labor may make demand upon any security which is provided for by law and which has been submitted to the Tax Commissioner or Commissioner of Labor on behalf of the person liable for the tax, together with any interest, penalties, additions to tax, and costs thereon. The security may, if necessary, be sold by the Tax Commissioner or Commissioner of Labor in the manner provided by section 77-27,131.

(2) The Tax Commissioner or Commissioner of Labor may abate the unpaid portion of the assessment of any tax, or other liability in respect thereof, if he or she determines that the administration and collection costs involved would not warrant collection of the amount due.

Source: Laws 1986, LB 1027, § 220; Laws 1995, LB 490, § 183; Laws 1999, LB 165, § 8; Laws 2007, LB334, § 93.
Operative date July 1, 2007.

77-3908 Actions prohibited; construction of act. (1) No injunction or writ of mandamus or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state to enjoin the collection of any tax, fee, or any amount of tax required to be collected under any tax program administered by the Tax Commissioner or Commissioner of Labor.

(2) The methods of enforcement and collection provided in the Uniform State Tax Lien Registration and Enforcement Act, including distraint and sale, shall be fully independent so

that pursuit of any one method shall not be conditioned upon pursuit of any other, nor shall pursuit of any one method in any way affect or limit the right of the Tax Commissioner or Commissioner of Labor to subsequently pursue any of the other methods of enforcement or collection.

Source: Laws 1986, LB 1027, § 221; Laws 1995, LB 490, § 184; Laws 1999, LB 165, § 9; Laws 2007, LB334, § 94.
Operative date July 1, 2007.

ARTICLE 41

EMPLOYMENT AND INVESTMENT GROWTH ACT

Section.

77-4105. Incentives; income tax, personal property tax, sales and use tax; credits.

77-4110. Annual report; contents.

77-4105 Incentives; income tax, personal property tax, sales and use tax; credits. (1) A taxpayer who has signed an agreement under section 77-4104 may elect to determine taxable income for purposes of the Nebraska income tax using the sales factor only. The election may be made for the year during which the application was filed and for each year thereafter through the eighth year after the end of the entitlement period. The election shall be made for the year of the election by computing taxable income using the sales factor only on the tax return.

(2) A taxpayer who has signed an agreement under section 77-4104 shall receive the incentive provided in this subsection if the agreement contains one or more projects which together will result in the investment in qualified property of at least ten million dollars and the hiring of at least one hundred new employees. Such ten-million-dollar investment and hiring of at least one hundred new employees shall be considered a required level of investment and employment for this subsection and for the recapture of personal property tax only.

The following property used in connection with such project or projects and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed shall constitute separate classes of personal property:

(a) Turbine-powered aircraft, including turboprop, turbojet, and turbofan aircraft, except when any such aircraft is used for fundraising for or for the transportation of an elected official;

(b) Computer systems, made up of equipment that is interconnected in order to enable the acquisition, storage, manipulation, management, movement, control, display, transmission, or reception of data involving computer software and hardware, used for business information processing which require environmental controls of temperature and power and which are capable of simultaneously supporting more than one transaction and more than one user. A computer system includes peripheral components which require environmental controls of temperature and power connected to such computers. Peripheral components shall be

limited to additional memory units, tape drives, disk drives, power supplies, cooling units, data switches, and communication controllers; and

(c) Personal property which is business equipment located in a single project if (i) the business equipment is involved directly in the manufacture or processing of agricultural products and (ii) the investment in the single project exceeds ten million dollars.

Such property shall be eligible for exemption from the tax on personal property from the first January 1 following the date of acquisition for property in subdivision (2)(a) of this section, or from the first January 1 following the end of the year during which the required levels were exceeded for property in subdivisions (2)(b) and (2)(c) of this section, through the sixteenth December 31 after the filing of the application. In order to receive the property tax exemptions allowed by subdivisions (2)(a), (2)(b), and (2)(c) of this section, the taxpayer shall annually file a claim for exemption with the Tax Commissioner on or before May 1. The form and supporting schedules shall be prescribed by the Tax Commissioner and shall list all property for which exemption is being sought under this section. A separate claim for exemption must be filed for each project and each county in which property is claimed to be exempt. A copy of this form must also be filed with the county assessor in each county in which the applicant is requesting exemption. The Tax Commissioner shall determine the eligibility of each item listed for exemption and, on or before August 10, certify such to the taxpayer and to the affected county assessor.

(3) When the taxpayer has met the required levels of employment and investment contained in the agreement, the taxpayer shall also be entitled to the following incentives:

(a) A refund of all sales and use taxes paid under the Nebraska Revenue Act of 1967, the Local Option Revenue Act, and sections 13-319, 13-324, and 13-2813 from the date of the application through the meeting of the required levels of employment and investment for all purchases, including rentals, of:

(i) Qualified property used as a part of the project;

(ii) Property, excluding motor vehicles, based in this state and used in both this state and another state in connection with the project except when any such property is to be used for fundraising for or for the transportation of an elected official;

(iii) Tangible personal property by the owner of the improvement to real estate that is incorporated into real estate as a part of a project; and

(iv) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the owner of the improvement to real estate. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax; and

(b) A refund of the sales and use taxes paid under the Nebraska Revenue Act of 1967, the Local Option Revenue Act, and sections 13-319, 13-324, and 13-2813 on the types of purchases, including rentals, listed in subdivision (a) of this subsection for such taxes paid during each year of the entitlement period in which the taxpayer is at or above the required levels of employment and investment.

(4) Any taxpayer who qualifies for the incentives contained in subsections (1) and (3) of this section and who has added at least thirty new employees at the project shall also be entitled to:

(a) A credit equal to five percent of the amount by which the total compensation paid during the year to employees who are either Nebraska employees or base-year employees while employed at the project exceeds the average compensation paid at the project multiplied by the number of equivalent base-year employees.

For the computation of such credit, average compensation shall mean the total compensation paid at the project divided by the total number of equivalent employees at the project; and

(b) A credit equal to ten percent of the investment made in qualified property at the project.

The credits prescribed in subdivisions (a) and (b) of this subsection shall be allowable for compensation paid and investments made during each year of the entitlement period that the taxpayer is at or above the required levels of employment and investment.

The credit prescribed in subdivision (b) of this subsection shall also be allowable during the first year of the entitlement period for investment in qualified property at the project after the date of the application and before the required levels of employment and investment were met.

Source: Laws 1987, LB 775, § 5; Laws 1988, LB 1234, § 7; Laws 1996, LB 1177, § 20; Laws 2000, LB 968, § 73; Laws 2001, LB 142, § 59; Laws 2007, LB223, § 25; Laws 2007, LB334, § 95.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 223, section 25, with LB 334, section 95, to reflect all amendments.

Note: The changes made by LB 334 became operative July 1, 2007. The changes made by LB 223 became operative September 1, 2007.

Cross Reference

Local Option Revenue Act, see section 77-27,148.

Nebraska Revenue Act of 1967, see section 77-2701.

77-4110 Annual report; contents. (1) The Tax Commissioner shall submit an annual report to the Legislature no later than July 15 of each year.

(2) The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, (c) the identity of each taxpayer, and (d) the location of each project.

(3) The report shall also state by industry group (a) the specific incentive options applied for under the Employment and Investment Growth Act, (b) the refunds allowed on the investment, (c) the credits earned, (d) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (e) the credits used to obtain sales and use tax refunds, (f) the number of jobs created, (g) the total number of employees employed in the state by the taxpayer on the last day of the calendar quarter prior to the application date and the total number of employees employed in the state by the taxpayer on subsequent reporting dates, (h) the expansion of capital investment, (i) the estimated wage levels of jobs created subsequent to the application date, (j) the total number of qualified applicants, (k) the projected future state revenue gains and losses, (l) the sales tax refunds owed to the applicants,

(m) the credits outstanding, and (n) the value of personal property exempted by class in each county.

(4) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 1987, LB 775, § 10; Laws 1990, LB 431, § 3; Laws 2007, LB223, § 26.
Operative date September 1, 2007.

ARTICLE 42

PROPERTY TAX CREDIT ACT

Section.

77-4209. Act, how cited.

77-4210. Purpose of act.

77-4211. Property Tax Credit Cash Fund; created; use; investment.

77-4212. Property tax credit; county treasurer; duties; disbursement to counties; State Treasurer; duties.

77-4209 Act, how cited. Sections 77-4209 to 77-4212 shall be known and may be cited as the Property Tax Credit Act.

Source: Laws 2007, LB367, § 1.
Operative date May 19, 2007.

77-4210 Purpose of act. The purpose of the Property Tax Credit Act is to provide property tax relief for property taxes levied against real property. The property tax relief will be made to owners of real property in the form of a property tax credit.

Source: Laws 2007, LB367, § 2.
Operative date May 19, 2007.

77-4211 Property Tax Credit Cash Fund; created; use; investment. The Property Tax Credit Cash Fund is created. The fund shall only be used pursuant to the Property Tax Credit 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 2007, LB367, § 3.
Operative date May 19, 2007.

Cross Reference

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

77-4212 Property tax credit; county treasurer; duties; disbursement to counties; State Treasurer; duties. (1) For tax year 2007, the amount of relief granted under the Property Tax Credit Act shall be one hundred five million dollars. For tax year 2008, the

amount of relief granted under the act shall be one hundred fifteen million dollars. It is the intent of the Legislature to fund the Property Tax Credit Act for tax years after tax year 2008 using available revenue. The relief shall be in the form of a property tax credit which appears on the property tax statement.

(2) To determine the amount of the property tax credit, the county treasurer shall multiply the amount disbursed to the county under subsection (4) of this section by the ratio of the real property valuation of the parcel to the total real property valuation in the county. The amount determined shall be the property tax credit for the property.

(3) If the real property owner qualifies for a homestead exemption under sections 77-3501 to 77-3529, the owner shall also be qualified for the relief provided in the act to the extent of any remaining liability after calculation of the relief provided by the homestead exemption. If the credit results in a property tax liability on the homestead that is less than zero, the amount of the credit which cannot be used by the taxpayer shall be returned to the State Treasurer by July 1 of the year the amount disbursed to the county was disbursed. The State Treasurer shall immediately credit any funds returned under this section to the Property Tax Credit Cash Fund.

(4) The amount disbursed to each county shall be equal to the amount available for disbursement determined under subsection (1) of this section multiplied by the ratio of the real property valuation in the county to the real property valuation in the state. By September 15, the Property Tax Administrator shall determine the amount to be disbursed under this subsection to each county and certify such amounts to the State Treasurer and to each county. The disbursements to the counties shall occur in two equal payments, the first on or before January 31 and the second on or before April 1. After retaining one percent of the receipts for costs, the county treasurer shall allocate the remaining receipts to each taxing unit levying taxes on taxable property in the tax district in which the real property is located in the same proportion that the levy of such taxing unit bears to the total levy on taxable property of all the taxing units in the tax district in which the real property is located.

(5) The State Treasurer shall transfer from the General Fund to the Property Tax Credit Cash Fund one hundred five million dollars by August 1, 2007, and one hundred fifteen million dollars by August 1, 2008.

(6) The Legislature shall have the power to transfer funds from the Property Tax Credit Cash Fund to the General Fund.

Source: Laws 2007, LB367, § 4.
Operative date May 19, 2007.

ARTICLE 49

QUALITY JOBS ACT

Section.

77-4933. Report; contents.

77-4933 Report; contents. (1) The Department of Revenue shall submit an annual report to the Legislature no later than July 15 each year. The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, (c) the identity of each company, and (d) the location of each project.

(2) The report shall also state by industry group (a) the amount of wage benefit credits allowed under the Quality Jobs Act, (b) the number of direct jobs created at the project, (c) the amount of direct capital investment under the act, (d) the estimated wage levels of jobs created by the companies at the projects, (e) the estimated indirect jobs and investment created on account of the projects, and (f) the projected future state and local revenue gains and losses from all revenue sources on account of the direct and indirect jobs and investment created on account of the project.

(3) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 1995, LB 829, § 33; Laws 2007, LB223, § 27.
Operative date September 1, 2007.

ARTICLE 50

TAX EQUALIZATION AND REVIEW COMMISSION ACT

Section.

- 77-5003. Tax Equalization and Review Commission; created; commissioners; term.
- 77-5004. Commissioner; qualifications; conflict of interests; continuing education; expenses.
- 77-5007. Commission; powers and duties.
- 77-5008. Commission; writs of mandamus.
- 77-5011. Chairperson; powers and duties.
- 77-5014. Repealed. Laws 2007, LB 167, § 13.
- 77-5016. Hearing or proceeding; commission; powers and duties; false statement; penalty; costs.
- 77-5017. Appeals or petitions; orders authorized.
- 77-5018. Appeals; decisions and orders; requirements; correction of errors.
- 77-5020. County assessor or deputy assessor; invalidation or suspension of certificate; appeal.
- 77-5023. Commission; power to change value; acceptable range.
- 77-5026. Commission; change of value; hearing; procedure.
- 77-5028. Commission; enter order.

77-5003 Tax Equalization and Review Commission; created; commissioners; term. (1) The Tax Equalization and Review Commission is created. The Tax Commissioner has no supervision, authority, or control over the actions or decisions of the commission relating to its duties prescribed by law. The commission shall have three commissioners, one from each congressional district, and beginning on and after January 1, 2002, the commission

shall have four commissioners. One at-large commissioner shall be appointed in addition to the commissioners representing the congressional districts. All commissioners shall be appointed by the Governor with the approval of a majority of the members of the Legislature.

(2) The term of the commissioner from district 1 expires January 1, 2010, the term of the commissioner from district 2 expires January 1, 2012, and the term of the commissioner from district 3 expires January 1, 2008. The term of the at-large commissioner expires on January 1, 2008. After the terms of the commissioners are completed as provided in this section, each subsequent term shall be for six years beginning and ending on January 1 of the applicable year. Vacancies occurring during a term shall be filled by appointment for the unexpired term. Upon the expiration of his or her term of office, a commissioner shall continue to serve until his or her successor has been appointed.

(3) The Governor shall designate one commissioner, who is an attorney admitted to practice before the Nebraska Supreme Court, to serve as the chairperson of the commission from January 1, 2002, through December 31, 2003. Beginning on January 1, 2004, the commission shall designate pursuant to rule and regulation its chairperson and vice-chairperson on a two-year, rotating basis among the commissioners who are attorneys admitted to practice before the Nebraska Supreme Court.

(4) A commissioner may be removed by the Governor for misfeasance, malfeasance, or willful neglect of duty or other cause after notice and a public hearing unless notice and hearing are expressly waived in writing by the commissioner.

Source: Laws 1995, LB 490, § 3; Laws 1998, LB 1104, § 24; Laws 2001, LB 465, § 3; Laws 2003, LB 291, § 5; Laws 2007, LB 167, § 4.
Effective date February 10, 2007.

77-5004 Commissioner; qualifications; conflict of interests; continuing education; expenses. (1) Each commissioner shall be a qualified voter and resident of the state and, for each commissioner representing a congressional district, a domiciliary of the district he or she represents.

(2) Each commissioner shall devote his or her full time and efforts to the discharge of his or her duties and shall not hold any other office under the laws of this state, any city or county in this state, or the United States Government while serving on the commission. Each commissioner shall possess:

(a) Appropriate knowledge of terms commonly used in or related to real property appraisal and of the writing of appraisal reports;

(b) Adequate knowledge of depreciation theories, cost estimating, methods of capitalization, and real property appraisal mathematics;

(c) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and evaluating of data involved in the valuation of real property, including complex industrial properties and mass appraisal techniques;

(d) Knowledge of the law relating to taxation, civil and administrative procedure, due process, and evidence in Nebraska;

(e) At least thirty hours of successfully completed class hours in courses of study, approved by the Real Property Appraiser Board, which relate to appraisal and which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course. If a commissioner has not received such training prior to his or her appointment, such training shall be completed within one year after appointment; and

(f) Such other qualifications and skills as reasonably may be requisite for the effective and reliable performance of the commission's duties.

(3) One commissioner shall possess any certification or training required to become a licensed real property appraiser as set forth in section 76-2230.

(4) Prior to January 1, 2002, the chairperson, and on and after January 1, 2002, at least two commissioners, shall have been engaged in the practice of law in the State of Nebraska for at least five years, which may include prior service as a judge, and shall be currently admitted to practice before the Nebraska Supreme Court.

(5) No commissioner or employee of the commission shall hold any position of profit or engage in any occupation or business interfering with or inconsistent with his or her duties as a commissioner or employee. A person is not eligible for appointment and may not hold the office of commissioner or be appointed by the commission to or hold any office or position under the commission if he or she holds any official office or position.

(6)(a) Each commissioner who meets the requirements of subsection (4) of this section on or after January 1, 2002, shall annually attend a seminar or class of at least two days' duration that is:

(i) Sponsored by a recognized assessment or appraisal organization, in each of these areas: Utility and railroad appraisal; appraisal of complex industrial properties; appraisal of other hard to assess properties; and mass appraisal, residential or agricultural appraisal, or assessment administration; or

(ii) Pertaining to management, law, civil or administrative procedure, or other knowledge or skill necessary for performing the duties of the office.

(b) Each commissioner who does not meet the requirements of subsection (4) of this section on or after January 1, 2002, shall within two years after his or her appointment attend at least thirty hours of instruction that constitutes training for judges or administrative law judges.

(7) The commissioners shall be considered employees of the state for purposes of sections 81-1301 to 81-1391 and 84-1601 to 84-1615.

(8) The commissioners shall be reimbursed as prescribed in sections 81-1174 to 81-1177 for their actual and necessary expenses in the performance of their official duties pursuant to the Tax Equalization and Review Commission Act.

Source: Laws 1995, LB 490, § 4; Laws 1996, LB 1038, § 2; Laws 1999, LB 32, § 1; Laws 2001, LB 170, § 19; Laws 2001, LB 465, § 4; Laws 2002, LB 994, § 28; Laws 2003, LB 292, § 15; Laws 2004, LB 973, § 47; Laws 2006, LB 778, § 73; Laws 2007, LB186, § 25.
Effective date September 1, 2007.

77-5007 Commission; powers and duties. The commission has the power and duty to hear and determine appeals of:

(1) Decisions of any county board of equalization equalizing the value of individual tracts, lots, or parcels of real property so that all real property is assessed uniformly and proportionately;

(2) Decisions of any county board of equalization granting or denying tax-exempt status for real or personal property or an exemption from motor vehicle taxes and fees;

(3) Decisions of the Tax Commissioner, and decisions of the Property Tax Administrator made before July 1, 2007, determining the taxable property of a railroad company, car company, public service entity, or air carrier within the state;

(4) Decisions of the Tax Commissioner, and decisions of the Property Tax Administrator made before July 1, 2007, determining adjusted valuation pursuant to section 79-1016;

(5) Decisions of any county board of equalization on the valuation of personal property or any penalties imposed under sections 77-1233.04 and 77-1233.06;

(6) Decisions of any county board of equalization on claims that a levy is or is not for an unlawful or unnecessary purpose or in excess of the requirements of the county;

(7) Decisions of any county board of equalization granting or rejecting an application for a homestead exemption;

(8) Decisions of the Department of Motor Vehicles determining the taxable value of motor vehicles pursuant to section 60-3,188;

(9) Decisions of the Tax Commissioner, and decisions of the Property Tax Administrator made before July 1, 2007, made under section 77-1330;

(10) Any other decision of any county board of equalization;

(11) Any other decision of the Property Tax Administrator made before July 1, 2007, and decisions made by the Tax Commissioner regarding property valuation, exemption, or taxation made on or after July 1, 2007;

(12) Decisions of the Tax Commissioner pursuant to section 77-3520; and

(13) Any other decision, determination, action, or order from which an appeal to the commission is authorized.

The commission has the power and duty to hear and grant or deny relief on petitions.

Source: Laws 1995, LB 490, § 7; Laws 1996, LB 1038, § 3; Laws 1997, LB 270, § 102; Laws 1997, LB 397, § 35; Laws 1998, LB 306, § 40; Laws 1999, LB 140, § 2; Laws 1999, LB 194, § 33; Laws 2001, LB 170, § 20; Laws 2004, LB 973, § 48; Laws 2005, LB 15, § 8; Laws 2005, LB 261, § 8; Laws 2005, LB 274, § 280; Laws 2007, LB334, § 96.
Operative date July 1, 2007.

77-5008 Commission; writs of mandamus. In addition to its other powers and duties, the commission may issue writs of mandamus compelling compliance with its orders and compelling the Tax Commissioner to enforce its orders and may charge the party which has not complied with the commission's orders with costs borne by the Tax Commissioner or by the Property Tax Administrator before July 1, 2007.

Source: Laws 1995, LB 490, § 8; Laws 2007, LB334, § 97.
Operative date July 1, 2007.

77-5011 Chairperson; powers and duties. The chairperson may call special meetings of the commission at such times as its business requires. The chairperson may also administer oaths and affirmations and sign all orders, certificates, and process in the name of the commission. The chairperson shall attest all orders, certificates, and process with the official seal of the commission. In the absence of the chairperson the vice-chairperson may perform the duties of the chairperson. Orders, certificates, and process under the official seal of the commission may be enforced by the district court for Lancaster County.

Source: Laws 1995, LB 490, § 11; Laws 1997, LB 397, § 36; Laws 2003, LB 291, § 7; Laws 2007, LB 167, § 5.
Effective date February 10, 2007.

77-5014 Repealed. Laws 2007, LB 167, § 13.

77-5016 Hearing or proceeding; commission; powers and duties; false statement; penalty; costs. Any hearing or proceeding of the commission shall be conducted as an informal hearing unless a formal hearing is granted as determined by the commission according to its rules and regulations. In any hearing or proceeding heard by the commission or a panel of commissioners:

(1) The commission may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs excluding incompetent, irrelevant, immaterial, and unduly repetitious evidence and shall give effect to the privilege rules of evidence in sections 27-501 to 27-513 but shall not otherwise be bound by the usual common-law or statutory rules of evidence except during a formal hearing. Any party to an appeal filed under section 77-5007 may request a formal hearing by delivering a written request to the commission not more than thirty days after the appeal is filed. The requesting party shall be liable for the payment of fees and costs of a court reporter pending a final decision. The commission shall be bound by the rules of evidence applicable in district court in any formal hearing held by the commission. Fees and costs of a court reporter shall be paid by the party or parties against whom a final decision is rendered, and all other costs shall be allocated as the commission may determine;

(2) The commission may administer oaths, issue subpoenas, and compel the attendance of witnesses and the production of any papers, books, accounts, documents, statistical analysis, and testimony. The commission may adopt and promulgate necessary rules for discovery which are consistent with the rules adopted by the Supreme Court pursuant to section 25-1273.01;

(3) The commission may consider and utilize the provisions of the Constitution of the United States, the Constitution of Nebraska, the laws of the United States, the laws of Nebraska, the Code of Federal Regulations, the Nebraska Administrative Code, any decision of the several courts of the United States or the State of Nebraska, and the legislative history of any law, rule, or regulation, without making the document a part of the record. The

commission may without inclusion in the record consider and utilize published treatises, periodicals, and reference works pertaining to the valuation or assessment of real or personal property or the meaning of words and phrases if the document is identified in the commission's rules and regulations. All other evidence, including records and documents in the possession of the commission of which it desires to avail itself, shall be offered and made a part of the record in the case. No other factual information or evidence other than that set forth in this section shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference;

(4) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence;

(5) The commission may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge or statistical information regarding general levels of assessment within a county or a class or subclass of real property within a county and measures of central tendency within such county or classes or subclasses within such county which have been made known to the commission. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material so noticed. They shall be afforded an opportunity to contest the facts so noticed. The commission may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it;

(6) Any person testifying under oath at a hearing who knowingly and intentionally makes a false statement to the commission or its designee is guilty of perjury. For the purpose of this section, perjury is a Class I misdemeanor;

(7) The commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal;

(8) In all appeals, excepting those arising under section 77-1606, if the appellant presents no evidence to show that the order, decision, determination, or action appealed from is incorrect, the commission shall deny the appeal. If the appellant presents any evidence to show that the order, decision, determination, or action appealed from is incorrect, such order, decision, determination, or action shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary;

(9) If the appeal concerns a decision by the county board of equalization that property is, in whole or in part, exempt from taxation, the decision to be rendered by the commission shall only determine the exemption status of the property. The decision shall not determine the taxable value of the property unless stipulated by the parties according to subsection (2) of section 77-5017;

(10) If the appeal concerns a decision by the county board of equalization that property owned by the state or a political subdivision is or is not exempt and there has been no final determination of the value of the property, the decision to be rendered by the commission shall only determine the exemption status of the property. The decision shall not determine

the taxable value of the property unless stipulated by the parties according to subsection (2) of section 77-5017;

(11) The costs of any appeal, including the costs of witnesses, may be taxed by the commission as it deems just, except costs payable by the appellant pursuant to section 77-1510.01, unless the appellant is the county assessor or county clerk in which case the costs shall be paid by the county; and

(12) The commission shall deny relief to the appellant or petitioner in any hearing or proceeding unless a majority of the commissioners present determine that the relief should be granted.

Source: Laws 1995, LB 490, § 16; Laws 1997, LB 397, § 38; Laws 1999, LB 140, § 4; Laws 2000, LB 968, § 75; Laws 2001, LB 170, § 22; Laws 2001, LB 419, § 1; Laws 2001, LB 465, § 7; Laws 2002, LB 994, § 29; Laws 2003, LB 291, § 9; Laws 2004, LB 973, § 51; Laws 2005, LB 15, § 9; Laws 2007, LB167, § 6.
Effective date February 10, 2007.

77-5017 Appeals or petitions; orders authorized. (1) In resolving an appeal or petition, the commission may make such orders as are appropriate for resolving the dispute but in no case shall the relief be excessive compared to the problems addressed. The commission may make prospective orders requiring changes in assessment practices which will improve assessment practices or affect the general level of assessment or the measures of central tendency in a positive way. If no other relief is adequate to resolve disputes, the commission may order a reappraisal of property within a county, an area within a county, or classes or subclasses of property within a county.

(2) In an appeal specified in subdivision (9) or (10) of section 77-5016 for which the commission determines exempt property to be taxable, the commission shall order the county board of equalization to determine the taxable value of the property, unless the parties stipulate to such taxable value during the hearing before the commission. The order shall require the county board of equalization to (a) assess such property using procedures for assessing omitted property, (b) determine such taxable value within ninety days after the issuance of the commission's order, and (c) apply interest, but not penalty, to the taxable value as of the date the commission's order was issued or the date the taxes were delinquent, whichever is later.

(3) A determination of the taxable value of the property made by the county board of equalization pursuant to subsection (2) of this section may be appealed to the commission within thirty days after the board's decision.

Source: Laws 1995, LB 490, § 17; Laws 2001, LB 419, § 2; Laws 2004, LB 973, § 61; Laws 2007, LB167, § 7.
Effective date February 10, 2007.

77-5018 Appeals; decisions and orders; requirements; correction of errors. (1) The commission may issue decisions and orders which are supported by the evidence and appropriate for resolving the matters in dispute. Every final decision and order adverse to a party to the proceeding, rendered by the commission in a case appealed to the commission,

shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order shall be delivered or mailed upon request to each party or his or her attorney of record. Any decision rendered by the commission shall be certified to the county treasurer and to the officer charged with the duty of preparing the tax list, and if and when such decision becomes final, such officers shall correct their records accordingly and the tax list pursuant to section 77-1613.02.

(2) The commission may, on its own motion, modify or change its findings or orders, at any time before an appeal and within ten days after the date of such findings or orders, for the purpose of correcting any ambiguity, clerical error, or patent or obvious error. The time for appeal shall not be lengthened because of the correction unless the correction substantially changes the findings or order.

Source: Laws 1995, LB 490, § 18; Laws 1997, LB 397, § 39; Laws 2001, LB 465, § 8; Laws 2005, LB 15, § 10; Laws 2007, LB166, § 11.
Effective date March 8, 2007.

77-5020 County assessor or deputy assessor; invalidation or suspension of certificate; appeal. The commission, subject to rules and regulations, shall have the power to invalidate or suspend the certificate issued pursuant to section 77-422 of any county assessor or deputy assessor who willfully fails or refuses to comply with any order of the commission. No certificate shall be invalidated or suspended except upon a hearing before the commission.

Any county assessor or deputy assessor whose certificate has been so invalidated or suspended may appeal the decision to the Court of Appeals in accordance with section 77-5019.

No action shall be brought under this section more than two years after the date of the act, last date of a series of actions complained of, or the last date the county assessor or deputy assessor could have acted to comply, whichever is later.

Source: Laws 1995, LB 490, § 20; Laws 2004, LB 973, § 62; Laws 2007, LB167, § 8.
Effective date February 10, 2007.

77-5023 Commission; power to change value; acceptable range. (1) Pursuant to section 77-5022, the commission shall have the power to increase or decrease the value of a class or subclass of real property in any county or taxing authority or of real property valued by the state so that all classes or subclasses of real property in all counties fall within an acceptable range.

(2) An acceptable range is the percentage of variation from a standard for valuation as measured by an established indicator of central tendency of assessment. Acceptable ranges are: (a) For agricultural land and horticultural land as defined in section 77-1359, sixty-nine to seventy-five percent of actual value; (b) for lands receiving special valuation, sixty-nine to seventy-five percent of special valuation as defined in section 77-1343 and sixty-nine to

seventy-five percent of recapture valuation as defined in section 77-1343; and (c) for all other real property, ninety-two to one hundred percent of actual value.

(3) Any increase or decrease shall cause the level of value determined by the commission to be at the midpoint of the applicable acceptable range.

(4) Any decrease or increase to a subclass of property shall also cause the level of value determined by the commission for the class from which the subclass is drawn to be within the applicable acceptable range.

(5) Whether or not the level of value determined by the commission falls within an acceptable range or at the midpoint of an acceptable range may be determined to a reasonable degree of certainty relying upon generally accepted mass appraisal techniques.

Source: Laws 1903, c. 73, § 130, p. 434; R.S.1913, § 6447; Laws 1921, c. 133, art. XI, § 4, p. 591; C.S.1922, § 5901; C.S.1929, § 77-1004; Laws 1933, c. 129, § 1, p. 505; C.S.Supp.,1941, § 77-1004; R.S.1943, § 77-506; Laws 1955, c. 289, § 4, p. 918; Laws 1957, c. 323, § 1, p. 1145; Laws 1957, c. 320, § 3, p. 1139; Laws 1979, LB 187, § 193; Laws 1985, LB 268, § 2; Laws 1987, LB 508, § 19; Laws 1992, LB 1063, § 58; Laws 1992, Second Spec. Sess., LB 1, § 56; Laws 1995, LB 137, § 1; R.S.1943, (1996), § 77-506; Laws 1997, LB 397, § 41; Laws 2000, LB 968, § 77; Laws 2001, LB 170, § 23; Laws 2003, LB 291, § 13; Laws 2004, LB 973, § 64; Laws 2006, LB 808, § 44; Laws 2006, LB 968, § 15; Laws 2007, LB167, § 9.
Effective date February 10, 2007.

77-5026 Commission; change of value; hearing; procedure. Pursuant to section 77-5023, if the commission finds that the level of value of a class or subclass of real property fails to satisfy the requirements of section 77-5023, the commission shall issue a notice to the counties which it deems either undervalued or overvalued and shall set a date for hearing at least five days following the mailing of the notice unless notice is waived. The notice unless waived shall be mailed to the county clerk, county assessor, and chairperson of the county board. At the hearing the county assessor or other legal representatives of the county may appear and show cause why the value of a class or subclass of real property of the county should not be adjusted. A county assessor or other legal representative of the county may waive notice of the hearing or consent to entry of an order adjusting the value of a class or subclass of real property without further notice. At the hearing, the commission may receive testimony from any interested person.

Source: Laws 1921, c. 133, art. XI, § 4, p. 591; C.S.1922, § 5901; C.S.1929, § 77-1004; Laws 1933, c. 129, § 1, p. 505; C.S.Supp.,1941, § 77-1004; R.S.1943, § 77-508; Laws 1969, c. 653, § 2, p. 2569; Laws 1987, LB 508, § 21; Laws 1992, LB 1063, § 60; Laws 1992, Second Spec. Sess., LB 1, § 58; Laws 1993, LB 734, § 44; Laws 1995, LB 490, § 56; R.S.1943, (1996), § 77-508; Laws 1997, LB 397, § 44; Laws 2001, LB 170, § 25; Laws 2005, LB 15, § 12; Laws 2007, LB167, § 10.
Effective date February 10, 2007.

77-5028 Commission; enter order. After a hearing conducted pursuant to section 77-5026, the commission shall enter its order based on information presented to it at the hearing. The order of the commission shall be sent by certified mail to the county assessor and by regular mail to the county clerk and chairperson of the county board on or before May 15 of each year or the date determined by the Property Tax Administrator if an extension is

ordered pursuant to section 77-1514, unless the offices of the commission are closed, then the order of the commission shall be sent by the end of the next day the commission's offices are open. The order shall specify the percentage increase or decrease and the class or subclass of real property affected or the corrections or adjustments to be made to each parcel of real property in the class or subclass affected. The specified changes shall be made by the county assessor to each parcel of real property in the county so affected.

Source: Laws 1921, c. 133, art. XI, § 4, p. 591; C.S.1922, § 5901; C.S.1929, § 77-1004; Laws 1933, c. 129, § 1, p. 505; C.S.Supp.,1941, § 77-1004; R.S.1943, § 77-509; Laws 1959, c. 359, § 1, p. 1275; Laws 1969, c. 656, § 1, p. 2573; Laws 1969, c. 653, § 3, p. 2570; Laws 1979, LB 159, § 1; Laws 1987, LB 508, § 23; Laws 1991, LB 732, § 138; Laws 1992, LB 1063, § 61; Laws 1992, Second Spec. Sess., LB 1, § 59; Laws 1993, LB 734, § 45; Laws 1995, LB 452, § 14; Laws 1995, LB 490, § 58; Laws 1996, LB 1040, § 2; R.S.1943, (1996), § 77-509; Laws 1997, LB 397, § 46; Laws 2001, LB 170, § 27; Laws 2005, LB 15, § 13; Laws 2005, LB 261, § 10; Laws 2007, LB167, § 11.
Effective date February 10, 2007.

ARTICLE 55

INVEST NEBRASKA ACT

Section.

77-5509. Company, defined.

77-5542. Report; contents.

77-5509 Company, defined. Company means (1) any person subject to sales and use taxes and either the income tax imposed by the Nebraska Revenue Act of 1967 or the franchise tax under sections 77-3801 to 77-3807, (2) any corporation, partnership, limited liability company, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners are, subject to such taxes, and any other partnership, limited liability company, subchapter S corporation, or joint venture when the partners, owners, shareholders, or members are subject to such taxes, (3) any cooperative exempt from such taxes under section 521 of the Internal Revenue Code of 1986, as amended, and (4) any limited cooperative association.

Source: Laws 2001, LB 620, § 9; Laws 2007, LB368, § 138.
Operative date January 1, 2008.

Cross Reference

Nebraska Revenue Act of 1967, see section 77-2701.

77-5542 Report; contents. (1) The Department of Revenue shall submit an annual report to the Legislature no later than July 15 each year. The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, (c) the identity of each company, and (d) the location of each project.

(2) The report shall also state by industry group (a) the amount of wage benefit credits and investment tax credits allowed under the Invest Nebraska Act, (b) the number of direct jobs created at the projects, (c) the amount of direct capital investment under the act, (d) the estimated wage levels of jobs created by the companies at the projects, (e) the estimated

indirect jobs and investment created on account of the projects, and (f) the projected future state and local revenue gains and losses from all revenue sources on account of the direct and indirect jobs and investment created on account of the projects.

(3) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2001, LB 620, § 42; Laws 2007, LB223, § 28.
Operative date September 1, 2007.

ARTICLE 57

NEBRASKA ADVANTAGE ACT

Section.

77-5715. Qualified business, defined.

77-5719. Taxpayer, defined.

77-5725. Tiers; requirements; incentives; enumerated.

77-5728. Incentives; transfer; when; effect.

77-5715 Qualified business, defined. (1) For a tier 2, tier 3, tier 4, or tier 5 project, qualified business means any business engaged in:

(a) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(b) The performance of data processing, telecommunication, insurance, or financial services. For purposes of this subdivision, financial services includes only financial services provided by any financial institution subject to tax under Chapter 77, article 38, or any person or entity licensed by the Department of Banking and Finance or the federal Securities and Exchange Commission and telecommunication services includes community antenna television service, Internet access, satellite ground station, data center, call center, or telemarketing;

(c) The assembly, fabrication, manufacture, or processing of tangible personal property;

(d) The administrative management of the taxpayer's activities, including headquarter facilities relating to such activities or the administrative management of any of the activities of any business entity or entities in which the taxpayer or a group of its shareholders holds any direct or indirect ownership interest of at least ten percent, including headquarter facilities relating to such activities;

(e) The storage, warehousing, distribution, transportation, or sale of tangible personal property;

(f) The sale of software development services, computer systems design, product testing services, or guidance or surveillance systems design services or the licensing of technology if the taxpayer derives at least seventy-five percent of the sales or revenue attributable to such

activities relating to the project from sales or licensing either to customers who are not related persons and located outside the state or to the United States Government; or

(g) Any combination of the activities listed in this subsection.

(2) For a tier 1 project, qualified business means any business engaged in:

(a) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(b) The assembly, fabrication, manufacture, or processing of tangible personal property;

(c) The sale of software development services, computer systems design, product testing services, or guidance or surveillance systems design services or the licensing of technology if the taxpayer derives at least seventy-five percent of the sales or revenue attributable to such activities relating to the project from sales or licensing either to customers who are not related persons and are located outside the state or to the United States Government; or

(d) Any combination of activities listed in this subsection.

(3) Qualified business does not include any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of food prepared for immediate consumption or are sales to the ultimate consumer of tangible personal property which is not assembled, fabricated, manufactured, or processed by the taxpayer or used by the purchaser in any of the activities listed in subsection (1) or (2) of this section.

Source: Laws 2005, LB 312, § 37; Laws 2007, LB223, § 29.
Operative date September 1, 2007.

77-5719 Taxpayer, defined. Taxpayer means any person subject to sales and use taxes under the Nebraska Revenue Act of 1967 and subject to withholding under section 77-2753 and any corporation, partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, that is subject to such sales and use taxes or such withholding. Taxpayer does not include a political subdivision or an organization that is exempt from income taxes under section 501(a) of the Internal Revenue Code of 1986, as amended, or any partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture in which political subdivisions or organizations described in section 501(c) or (d) of the code hold an ownership interest of ten percent or more.

Source: Laws 2005, LB 312, § 41; Laws 2006, LB 1003, § 12; Laws 2007, LB368, § 139.
Operative date January 1, 2008.

Cross Reference

Nebraska Revenue Act of 1967, see section 77-2701.

77-5725 Tiers; requirements; incentives; enumerated. (1) Applicants may qualify for benefits under the Nebraska Advantage Act in one of five tiers:

(a) Tier 1, investment in qualified property of at least one million dollars and the hiring of at least ten new employees. There shall be no new project applications for benefits under

this tier filed on or after January 1, 2011, without further authorization of the Legislature. All complete project applications filed before January 1, 2011, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed before January 1, 2011. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(b) Tier 2, investment in qualified property of at least three million dollars and the hiring of at least thirty new employees;

(c) Tier 3, the hiring of at least thirty new employees. There shall be no new project applications for benefits under this tier filed on or after January 1, 2011, without further authorization of the Legislature. All complete project applications filed before January 1, 2011, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed before January 1, 2011. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(d) Tier 4, investment in qualified property of at least ten million dollars and the hiring of at least one hundred new employees; and

(e) Tier 5, investment in qualified property of at least thirty million dollars. Failure to maintain an average number of equivalent employees as defined in section 77-5727 greater than or equal to the number of equivalent employees in the base year shall result in a partial recapture of benefits.

(2) When the taxpayer has met the required levels of employment and investment contained in the agreement for a tier 1, tier 2, tier 4, or tier 5 project, the taxpayer shall be entitled to the following incentives:

(a) A refund of all sales and use taxes for a tier 2, tier 4, or tier 5 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 from the date of the application through the meeting of the required levels of employment and investment for all purchases, including rentals, of:

(i) Qualified property used as a part of the project;

(ii) Property, excluding motor vehicles, based in this state and used in both this state and another state in connection with the project except when any such property is to be used for fundraising for or for the transportation of an elected official;

(iii) Tangible personal property by the owner of the improvement to real estate that is incorporated into real estate as a part of a project; and

(iv) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the owner of the improvement to real estate. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax; and

(b) A refund of all sales and use taxes for a tier 2, tier 4, or tier 5 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 on the types of purchases, including rentals, listed in subdivision (a) of this subsection for such taxes paid during each year of the entitlement period in which the taxpayer is at or above the required levels of employment and investment.

(3) Any taxpayer who qualifies for a tier 1, tier 2, tier 3, or tier 4 project shall be entitled to a credit equal to three percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least sixty percent of the Nebraska average annual wage for the year of application. The credit shall equal four percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least seventy-five percent of the Nebraska average annual wage for the year of application. The credit shall equal five percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred percent of the Nebraska average annual wage for the year of application. The credit shall equal six percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred twenty-five percent of the Nebraska average annual wage for the year of application. For computation of such credit:

(a) Average annual wage means the total compensation paid to employees during the year at the project who are not base-year employees and who are paid wages equal to at least sixty percent of the Nebraska average weekly wage for the year of application divided by the number of equivalent employees making up such total compensation;

(b) Average wage of new employees means the average annual wage paid to employees during the year at the project who are not base-year employees and who are paid wages equal to at least sixty percent of the Nebraska average weekly wage for the year of application; and

(c) Nebraska average annual wage means the Nebraska average weekly wage times fifty-two.

(4) Any taxpayer who has met the required levels of employment and investment for a tier 2 or tier 4 project shall receive a credit equal to ten percent of the investment made in qualified property at the project. Any taxpayer who has met the required levels of investment and employment for a tier 1 project shall receive a credit equal to three percent of the investment made in qualified property at the project.

(5) The credits prescribed in subsections (3) and (4) of this section shall be allowable for compensation paid and investments made during each year of the entitlement period that the taxpayer is at or above the required levels of employment and investment.

(6) The credit prescribed in subsection (4) of this section shall also be allowable during the first year of the entitlement period for investment in qualified property at the project after the date of the application and before the required levels of employment and investment were met.

(7)(a) A taxpayer who has met the required levels of employment and investment for a tier 4 project shall receive the incentive provided in this subsection. Such investment and hiring

of new employees shall be considered a required level of investment and employment for this subsection and for the recapture of benefits under this subsection only.

(b) The following property used in connection with such project or projects and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed shall constitute separate classes of personal property:

(i) Turbine-powered aircraft, including turboprop, turbojet, and turbofan aircraft, except when any such aircraft is used for fundraising for or for the transportation of an elected official;

(ii) Computer systems, made up of equipment that is interconnected in order to enable the acquisition, storage, manipulation, management, movement, control, display, transmission, or reception of data involving computer software and hardware, used for business information processing which require environmental controls of temperature and power and which are capable of simultaneously supporting more than one transaction and more than one user. A computer system includes peripheral components which require environmental controls of temperature and power connected to such computer systems. Peripheral components shall be limited to additional memory units, tape drives, disk drives, power supplies, cooling units, data switches, and communication controllers;

(iii) Depreciable personal property used for a distribution facility, including, but not limited to, storage racks, conveyor mechanisms, forklifts, and other property used to store or move products; and

(iv) Personal property which is business equipment located in a single project if the business equipment is involved directly in the manufacture or processing of agricultural products.

(c) Such property shall be eligible for exemption from the tax on personal property from the first January 1 following the date of acquisition for property in subdivision (7)(b)(i) of this section, or from the first January 1 following the end of the year during which the required levels were exceeded for property in subdivisions (7)(b)(ii), (iii), and (iv) of this section, through the ninth December 31 after the first year any property included in subdivisions (7)(b)(ii), (iii), and (iv) of this section qualifies for the exemption. In order to receive the property tax exemptions allowed by subdivisions (7)(b)(i), (ii), (iii), and (iv) of this section, the taxpayer shall annually file a claim for exemption with the Tax Commissioner on or before May 1. The form and supporting schedules shall be prescribed by the Tax Commissioner and shall list all property for which exemption is being sought under this section. A separate claim for exemption must be filed for each project and each county in which property is claimed to be exempt. A copy of this form must also be filed with the county assessor in each county in which the applicant is requesting exemption. The Tax Commissioner shall determine the eligibility of each item listed for exemption and, on or before August 10, certify such to the taxpayer and to the affected county assessor. In determining the eligibility of items of personal property for exemption, the Tax Commissioner is limited to the question of whether the property claimed as exempt by the taxpayer falls within the classes of property described in subdivision (7)(b) of this section. The determination of whether a taxpayer is eligible to

obtain exemption for personal property based on meeting the required levels of investment and employment is the responsibility of the Tax Commissioner.

(8) The investment thresholds in this section for a particular year of application shall be adjusted by the method provided in this subsection. Beginning October 1, 2006, and each October 1 thereafter, the Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent available period shall be divided by the Producer Price Index for the first quarter of 2006 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2006. If the resulting amount is not a multiple of one million dollars, the amount shall be rounded to the next lowest one million dollars. The investment thresholds established by this subsection apply for purposes of project qualifications for all applications filed on or after January 1 of the following year for all years of the project. Adjustments do not apply to projects after the year of application.

Source: Laws 2005, LB 312, § 47; Laws 2006, LB 1003, § 14; Laws 2007, LB223, § 30; Laws 2007, LB334, § 98.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 223, section 30, with LB 334, section 98, to reflect all amendments.

Note: The changes made by LB 334 became operative July 1, 2007. The changes made by LB 223 became operative September 1, 2007.

Cross Reference

Local Option Revenue Act, see section 77-27,148.

Nebraska Revenue Act of 1967, see section 77-2701.

77-5728 Incentives; transfer; when; effect. (1) The incentives allowed under the Nebraska Advantage Act shall not be transferable except in the following situations:

(a) Any credit allowable to a partnership, a limited liability company, a subchapter S corporation, a cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, a limited cooperative association, or an estate or trust may be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities, and such partners, members, shareholders, or beneficiaries shall be deemed to have made an underpayment of their income taxes for any recapture required by section 77-5727. A credit distributed shall be considered a credit used and the partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, a limited cooperative association, estate, or trust shall be liable for any repayment required by section 77-5727; and

(b) The incentives previously allowed and the future allowance of incentives may be transferred when a project covered by an agreement is transferred in its entirety by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986, as amended.

(2) The acquiring taxpayer, as of the date of notification of the Tax Commissioner of the completed transfer, shall be entitled to any unused credits and to any future incentives allowable under the act.

(3) The acquiring taxpayer shall be liable for any recapture that becomes due after the date of the transfer for the repayment of any benefits received either before or after the transfer.

(4) If a taxpayer operating a project and allowed a credit under the act dies and there is a credit remaining after the filing of the final return for the taxpayer, the personal representative shall determine the distribution of the credit or any remaining carryover with the initial fiduciary return filed for the estate. The determination of the distribution of the credit may be changed only after obtaining the permission of the Tax Commissioner.

Source: Laws 2005, LB 312, § 50; Laws 2006, LB 1003, § 16; Laws 2007, LB368, § 140.
Operative date January 1, 2008.

ARTICLE 58

NEBRASKA ADVANTAGE RESEARCH AND DEVELOPMENT ACT

Section.

77-5803. Research tax credit; amount.

77-5803 Research tax credit; amount. (1) Any business firm which makes expenditures in research and experimental activities as defined in section 174 of the Internal Revenue Code of 1986, as amended, in this state shall be allowed a research tax credit as provided in the Nebraska Advantage Research and Development Act. The credit amount shall equal fifteen percent of the federal credit allowed under section 41 of the Internal Revenue Code of 1986, as amended. The credit shall be allowed for the first tax year it is claimed and for the four tax years immediately following.

(2) For any business firm doing business both within and without this state, the amount expended in research and experimental activities in this state in any tax year may be determined either by satisfactory proof of purchase or by apportioning the amount of the credit on the federal income tax return to the state based on the average of the property factor as determined in section 77-2734.12 and the payroll factor as determined in section 77-2734.13.

Source: Laws 2005, LB 312, § 61; Laws 2007, LB223, § 31.
Operative date September 1, 2007.

ARTICLE 59

NEBRASKA ADVANTAGE MICROENTERPRISE TAX CREDIT ACT

Section.

77-5903. Terms, defined.

77-5904. Tax credit; application; contents; advisory committee.

77-5903 Terms, defined. For purposes of the Nebraska Advantage Microenterprise Tax Credit Act:

(1) Actively engaged in the operation of a microbusiness means personal involvement on a continuous basis in the daily management and operation of the business;

(2) Distressed area means a municipality, county, unincorporated area within a county, or census tract in Nebraska that has (a) an unemployment rate which exceeds the statewide average unemployment rate, (b) a per capita income below the statewide average per capita income, or (c) had a population decrease between the two most recent federal decennial censuses;

(3) Equivalent employees means the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year;

(4) Microbusiness means any business employing five or fewer equivalent employees;

(5) New employment means the amount by which the total compensation paid during the tax year to employees who are Nebraska residents exceeds the total compensation paid to employees who are Nebraska residents in the tax year prior to application;

(6) New investment means the increase in the applicant's purchases of buildings and depreciable personal property located in Nebraska and expenditures on repairs and maintenance on property located in Nebraska, not including vehicles required to be registered for operation on the roads and highways of this state, during the tax year. If the buildings or depreciable personal property is leased, the amount of new investment shall be the increase in average net annual rents multiplied by the number of years of the lease for which the taxpayer is bound, not to exceed ten years;

(7) Related persons means (a) any corporation, partnership, limited liability corporation, cooperative, including cooperatives exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture which is or would otherwise be a member of the same unitary group, if incorporated, or any person who is considered to be a related person under either section 267(b) and (c) or section 707(b) of the Internal Revenue Code of 1986, as amended, and (b) any individual who is a spouse, parent if the taxpayer is a minor, or minor son or daughter of the taxpayer; and

(8) Taxpayer means any person subject to the income tax imposed by the Nebraska Revenue Act of 1967, any corporation, partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners representing an ownership interest of at least ninety percent of such entity are, subject to such tax, and any other partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture when the partners, shareholders, or members representing an ownership interest of at least ninety percent of such entity are subject to such tax.

Source: Laws 2005, LB 312, § 68; Laws 2006, LB 1003, § 17; Laws 2007, LB368, § 141.
Operative date January 1, 2008.

Cross Reference

Nebraska Revenue Act of 1967, see section 77-2701.

77-5904 Tax credit; application; contents; advisory committee. (1) The Department of Revenue shall accept applications for tax credits from taxpayers who are actively engaged in the operation of a microbusiness in a distressed area or who will establish a microbusiness that they will actively operate in a distressed area within the current or subsequent tax year. Applications shall be filed by November 1 and shall be complete by December 1 of each calendar year. Any application that is filed after November 1 or that is not complete on December 1 shall be considered to be filed during the following calendar year.

(2) The department may convene an advisory committee of individuals with expertise in small business development, lending, and community development to evaluate applications and advise the department in authorizing tentative tax credits.

(3) The application shall be on a form developed by the department and shall contain:

(a) A description of the microbusiness;

(b) The projected income and expenditures;

(c) The market to be served by the microbusiness and the way the expansion addresses the market;

(d) The amount of projected investment or employment increase that would generate the credit;

(e) The projected improvement in income or creation of new self-employment or other jobs in the distressed area;

(f) The nature of the applicant's engagement in the operation of the microbusiness; and

(g) Other documents, plans, and specifications as required by the department.

Source: Laws 2005, LB 312, § 69; Laws 2007, LB223, § 32.
Operative date September 1, 2007.

ARTICLE 60

TAX POLICY REFORM COMMISSION

Section.

77-6006. Employees to provide assistance; contracts; funding.

77-6006 Employees to provide assistance; contracts; funding. (1) Employees of the Department of Revenue and the Legislative Council shall be available to the Tax Policy Reform Commission to assist it in carrying out its work. The commission shall contract with a meeting facilitator and may contract with experts from any institution of postsecondary education in the state to provide assistance, specific research, research or policy reports,

or presentations to carry out the purposes of section 77-6004, within the constraints of the appropriation provided.

(2) Funding for the commission shall be appropriated to the Legislative Council and shall not exceed one hundred thousand dollars.

Source: Laws 2006, LB 542, § 6; Laws 2007, LB334, § 99.
Operative date July 1, 2007.
Termination date December 31, 2007.

ARTICLE 61

LONG-TERM CARE SAVINGS PLAN ACT

Section.

77-6102. Terms, defined.

77-6105. Qualified individual; withdrawals authorized.

77-6102 Terms, defined. For purposes of the Long-Term Care Savings Plan Act:

(1) Long-term care expense means the cost of long-term care in a long-term care facility and the cost of care provided in a person's home when the person receiving the care is unable to perform multiple basic life functions independently;

(2) Long-term care insurance premiums means premiums paid for a long-term care insurance policy issued pursuant to the Long-Term Care Insurance Act that offers coverage to the individual, the individual's spouse, or another person for whom the taxpayer has an insurable interest;

(3) Participant means an individual who has entered into a participation agreement or established an account with a financial institution with which the State Treasurer has an agreement under subsection (1) of section 77-6103; and

(4) Qualified individual means (a) a person who incurred long-term care expenses during the taxable year or (b) a person who turned fifty years of age or older during the taxable year who made payments for long-term care insurance premiums during the taxable year.

Source: Laws 2006, LB 965, § 2; Laws 2007, LB304, § 1.
Effective date September 1, 2007.

77-6105 Qualified individual; withdrawals authorized. A qualified individual as defined in subdivision (4)(a) of section 77-6102 may make withdrawals as a participant in the Nebraska long-term care savings plan to pay or reimburse long-term care expenses. A qualified individual as defined in subdivision (4)(b) of section 77-6102 may make withdrawals to pay or reimburse long-term care insurance premiums. Any participant who is not a qualified individual or who makes a withdrawal for any reason other than transfer of funds to a spouse, long-term care expenses, long-term care insurance premiums, or death of the participant shall be subject to a ten-percent penalty on the amount withdrawn. The State Treasurer shall collect the penalty.

REVENUE AND TAXATION

Source: Laws 2006, LB 965, § 5; Laws 2007, LB304, § 2.
Effective date September 1, 2007.

CHAPTER 79

SCHOOLS

Article.

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ARTICLE 1

DEFINITIONS AND CLASSIFICATIONS

Section.

79-102. School districts; classification.

79-102 School districts; classification. School districts in this state are classified as follows:

(1) Class I includes any school district that maintains only elementary grades under the direction of a single school board;

(2) Class II includes any school district embracing territory having a population of one thousand inhabitants or less that maintains both elementary and high school grades under the direction of a single school board;

(3) Class III includes any school district embracing territory having a population of more than one thousand and less than one hundred fifty thousand inhabitants that maintains both elementary and high school grades under the direction of a single school board;

(4) Class IV includes any school district embracing territory having a population of one hundred thousand or more inhabitants with a city of the primary class within the territory of the district that maintains both elementary and high school grades under the direction of a single school board;

(5) Class V includes any school district whose employees participate in a retirement system established pursuant to the Class V School Employees Retirement Act and which embraces territory having a city of the metropolitan class within the territory of the district that maintains both elementary grades and high school grades under the direction of a single school board

and any school district with territory in a city of the metropolitan class created pursuant to the Learning Community Reorganization Act and designated as a Class V school district in the reorganization plan; and

(6) Class VI includes any school district in this state that maintains only a high school, or a high school and grades seven and eight or six through eight as provided in section 79-411, under the direction of a single school board.

Source: Laws 1949, c. 256, § 2, p. 691; Laws 1959, c. 379, § 1, p. 1320; Laws 1981, LB 16, § 1; R.S.1943, (1994), § 79-102; Laws 1996, LB 900, § 2; Laws 1997, LB 345, § 6; Laws 1998, LB 629, § 1; Laws 2003, LB 394, § 1; Laws 2005, LB 126, § 8; Laws 2006, LB 1024, § 15; Referendum 2006, No. 422.

Cross Reference

City of the metropolitan class, population, see section 14-101.

City of the primary class, population, see section 15-101.

Class V School Employees Retirement Act, see section 79-978.01.

Commissioner of Education, assign number to each district, see section 79-307.

Learning Community Reorganization Act, see section 79-4,117.

ARTICLE 2

PROVISIONS RELATING TO STUDENTS

(c) ADMISSION REQUIREMENTS

Section.

79-217. School board and governing authority; student; immunization against certain contagious diseases; exception.

79-218. School board and governing authority; immunization clinics; request assistance.

79-219. Student; immunization status; Department of Health and Human Services; rules and regulations.

(f) PHYSICAL EXAMINATIONS

79-248. Pupils; physical examination; notice of defects; contagious or infectious disease; duty of school district.

79-249. Pupils; physical examination; rules; duties of Department of Health and Human Services; compliance with Medication Aide Act; when.

(c) ADMISSION REQUIREMENTS

79-217 School board and governing authority; student; immunization against certain contagious diseases; exception. Except as provided in sections 79-221 and 79-222, the school board or board of education of each school district and the governing authority of each private, denominational, or parochial school in this state shall require each student to be protected against measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, and tetanus by immunization prior to enrollment. Any student who does not comply with this section shall not be permitted to continue in school until he or she so complies, except as provided by section 79-222. Each school district shall make diligent efforts to inform families prior to the date of school registration of the immunization requirements of this section.

Except as provided in the Childhood Vaccine Act, the cost of such immunization shall be borne by the parent or guardian of each student who is immunized or by the Department of

Health and Human Services for those students whose parent or guardian is financially unable to meet such cost.

Source: Laws 1973, LB 173, § 1; Laws 1973, LB 546, § 1; Laws 1979, LB 59, § 2; Laws 1992, LB 431, § 8; Laws 1993, LB 536, § 109; Laws 1994, LB 1223, § 128; R.S.1943, (1994), § 79-444.01; Laws 1996, LB 900, § 21; Laws 1996, LB 1044, § 811; Laws 2005, LB 301, § 63; Laws 2007, LB296, § 707. Operative date July 1, 2007.

Cross Reference

Childhood Vaccine Act, see section 71-526.

79-218 School board and governing authority; immunization clinics; request assistance. Any school board or board of education of a school district or the governing authority of a private, denominational, or parochial school in this state may request assistance from the Department of Health and Human Services in establishing immunization clinics. Such assistance shall consist of vaccines, serums, and other supplies, services, and guidance from the Department of Health and Human Services.

Source: Laws 1973, LB 173, § 2; R.S.1943, (1994), § 79-444.02; Laws 1996, LB 900, § 22; Laws 1996, LB 1044, § 812; Laws 2005, LB 301, § 64; Laws 2007, LB296, § 708. Operative date July 1, 2007.

79-219 Student; immunization status; Department of Health and Human Services; rules and regulations. The Department of Health and Human Services shall adopt and promulgate rules and regulations relating to the required levels of protection, provisional enrollment under the provisions of section 79-222, the evidence necessary to prove that the required examination or immunization has been received, and the reporting of each student's immunization status. The department may modify, add to, or delete from the list of required immunizations set out in section 79-217. The department shall furnish local school authorities with copies of such rules and regulations and any other material which will assist in the carrying out of sections 79-214 and 79-217 to 79-223.

Source: Laws 1979, LB 59, § 3; Laws 1994, LB 1223, § 129; R.S.1943, (1994), § 79-444.03; Laws 1996, LB 900, § 23; Laws 1996, LB 1044, § 813; Laws 1998, LB 1073, § 159; Laws 2005, LB 301, § 65; Laws 2007, LB296, § 709. Operative date July 1, 2007.

(f) PHYSICAL EXAMINATIONS

79-248 Pupils; physical examination; notice of defects; contagious or infectious disease; duty of school district. Every school district shall cause every child under its jurisdiction to be separately and carefully inspected, except as otherwise provided in this section, to ascertain if such child is suffering from (1) defective sight or hearing, (2) dental defects, or (3) other conditions as prescribed by the Department of Health and Human Services. If such inspection determines that any child has such condition, the school shall notify the parent of the child in writing of such condition and explain to such parent the necessity of professional attendance for such child. Whenever a child apparently shows

symptoms of any contagious or infectious disease, such child shall be sent home immediately or as soon as safe and proper conveyance can be found and the proper school authority, school board, or board of education shall be at once notified. Such student may be excluded from school as provided in section 79-264. No child shall be compelled to submit to a physical examination other than the inspection by the school over the written objection of his or her parent or guardian delivered to the school authorities. Such objection does not exempt the child from the quarantine laws of the state and does not prohibit an examination for infectious or contagious diseases.

Source: Laws 1919, c. 241, § 1, p. 1004; C.S.1922, § 6536; Laws 1923, c. 55, § 1, p. 176; C.S.1929, § 79-2113; R.S.1943, § 79-2122; Laws 1949, c. 256, § 171, p. 748; Laws 1967, c. 538, § 1, p. 1778; R.S.1943, (1994), § 79-4.133; Laws 1996, LB 900, § 52; Laws 1996, LB 1044, § 815; Laws 2007, LB296, § 710.
Operative date July 1, 2007.

Cross Reference

Immunization requirements, see sections 79-217 to 79-223.

79-249 Pupils; physical examination; rules; duties of Department of Health and Human Services; compliance with Medication Aide Act; when. The Department of Health and Human Services shall adopt and promulgate rules and regulations for conducting school health inspections, the qualifications of the person or persons authorized to make such inspections, and the health conditions to be observed and remedied and shall furnish to school authorities regulations and other useful materials for carrying out the purposes of sections 79-248 to 79-253.

On and after July 1, 1999, no staff member of any school shall administer medication unless the school complies with the applicable requirements of the Medication Aide Act. Notwithstanding any other provision, nothing in the act shall be construed to require any school to employ or use a school nurse or medication aide in order to be in compliance with the act.

Source: Laws 1919, c. 241, § 2, p. 1004; C.S.1922, § 6537; C.S.1929, § 79-2114; R.S.1943, § 79-2123; Laws 1949, c. 256, § 172, p. 749; Laws 1967, c. 538, § 2, p. 1778; R.S.1943, (1994), § 79-4.134; Laws 1996, LB 900, § 53; Laws 1996, LB 1044, § 816; Laws 1998, LB 1354, § 43; Laws 2007, LB296, § 711.
Operative date July 1, 2007.

Cross Reference

Medication Aide Act, see section 71-6718.

ARTICLE 4

SCHOOL ORGANIZATION AND REORGANIZATION

(a) LEGISLATIVE GOALS, DIRECTIVES, AND LIMITATIONS FOR REORGANIZATION OF SCHOOL DISTRICTS

Section.

79-401. Reorganization of school districts; findings; intent; goals.

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- 79-402. Reorganization of school districts; requirements.
- 79-403. Creation of new district; requirements.
- 79-404. Merger of Class I districts within boundaries of Class VI district; not prohibited.

(b) LEGAL STATUS, FORMATION, AND TERRITORY

- 79-405. District; body corporate; powers; name.
- 79-406. Class II school district creation; board.
- 79-407. Class III school district; boundaries; body corporate; powers.
- 79-408. Class IV school district; boundaries; body corporate; powers; retirement plans; restrictions.
- 79-409. Class V school district; body corporate; powers.
- 79-410. Class VI school district; classification.
- 79-411. Class VI school district; junior-senior high school district created; procedure; vote required.

(c) PETITION PROCESS FOR REORGANIZATION

- 79-413. School districts; creation from other school districts; change of boundaries; affiliation; conditions; petition method; procedure.
- 79-415. Changes in boundaries; creation of new district; affiliation; how initiated.
- 79-416. School districts; merger or affiliation; petition.
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- 79-423. School district boundaries; legal voters; vote at district meetings or district elections.
- 79-424. Petition or plan for affiliation; procedures applicable.
- 79-425. Petition or plan for affiliation; resubmission; procedure.
- 79-426. Petition or plan for affiliation; state committee; powers and duties.
- 79-427. Petition or plan for affiliation; contents.
- 79-431. Affiliation; districts subject to dissolution; merger authorized; state committee; duties; districts which become Class I districts and dissolved districts; actions required.

(d) REORGANIZATION OF SCHOOL DISTRICTS ACT

- 79-433. Terms, defined.
- 79-434. Reorganization of school districts; methods.
- 79-435. State Committee for the Reorganization of School Districts; members; appointment; term; qualifications; expenses.
- 79-443. State committee; plan of reorganization; contents.
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- 79-449. Plan of reorganization; two or more districts; indebtedness.

(e) DISSOLUTION OF CLASS I AND CLASS II SCHOOL DISTRICTS

- 79-452. Dissolution of Class I or II school district; petition; sufficient signatures; effect; plan of reorganization.
- 79-454. Proposal; state committee; approve; election; notice.

79-455. Proposal; election; approve; county clerk; order; certificate; filing; appeal.

(f) FREEHOLDERS' PETITIONS

79-458. Class II or III school district; tract of land set off from district; petition; conditions; procedure; appeal.

(g) SPECIAL PROPERTY TRANSFERS AND DISSOLUTION
AND ANNEXATION OF SCHOOL DISTRICTS

79-470. Contract for instruction; merger; effect; limitation; dissolution.

79-472. Class II school district; discontinue high school; affiliation; vote; Class I school district; board; election.

79-473. Class III school district; annexed school district territory; negotiation; election; question on ballot.

79-477. Class VI school district; discontinuance of district; vote required; notice.

79-478. Class VI school district; disapproval by State Board of Education; Class I school district; withdrawal; vote required.

(h) PROCEDURES AND RULES FOR NEW OR CHANGED DISTRICTS

79-479. Change of boundaries; order; conditions; transfer of assets and liabilities.

79-492. Class I school district; organization of new district; first officers; term.

79-493. Class I or Class II school district; new district officers; acceptance of office.

79-494. Class I or Class II school district; new school district; when deemed organized.

79-495. Class I or Class II school district; new district; failure to organize; dissolution for failure to organize.

(i) DEPOPULATED DISTRICTS

79-499. Class II or Class III school district; membership requirements; cooperative programs; when required; plan; contract for services; effect.

(j) SPECIAL PROVISIONS FOR AFFILIATED DISTRICTS

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(l) UNIFIED SYSTEM

79-4,108. Unified system; interlocal agreement; contents; application; procedure; effect.

79-4,109. Class I district; reaffiliation authorized; effective date; effect.

79-4,110. Class I district; merge, dissolve, or reorganize; limitations.

79-4,111. Unified system; participating and nonparticipating Class I districts; treatment; budget data.

(m) REORGANIZATION OF CLASS I AND VI SCHOOL DISTRICTS

79-4,112. Repealed. Referendum 2006, No. 422.

79-4,113. Repealed. Referendum 2006, No. 422.

79-4,114. Repealed. Referendum 2006, No. 422.

79-4,115. Repealed. Referendum 2006, No. 422.

79-4,116. Repealed. Referendum 2006, No. 422.

(n) LEARNING COMMUNITY REORGANIZATION ACT

79-4,117. Act, how cited.

79-4,125. Disapproved plan; return to council.

79-4,126. Approved plan; procedure.

79-4,128. County clerk; duties; filings required.

79-4,130. Repealed. Laws 2007, LB 641, § 54.

(a) LEGISLATIVE GOALS, DIRECTIVES, AND LIMITATIONS
FOR REORGANIZATION OF SCHOOL DISTRICTS

79-401 Reorganization of school districts; findings; intent; goals. The Legislature finds and declares that orderly and appropriate reorganization of school districts may contribute to the objectives of tax equity, educational effectiveness, and cost efficiency. The Legislature further finds that there is a need for greater flexibility in school reorganization options and procedures. It is the intent of the Legislature to encourage an orderly and appropriate reorganization of school districts. The Legislature establishes as its goals for the reorganization of school districts that:

(1) All real property and all elementary and secondary students should be within school systems which offer education in grades kindergarten through twelve. For purposes of meeting this goal, Class I and Class VI school district combinations shall be considered as including all real property and all elementary and secondary students within a school district which offers education in kindergarten through grade twelve;

(2) School districts offering education in kindergarten through grade twelve should be encouraged, when possible, to consider cooperative programs in order to enhance educational opportunities to students; and

(3) The State Department of Education in conjunction with the Bureau of Educational Research and Field Studies in the Department of Education Administration at the University of Nebraska-Lincoln should be encouraged to offer greater technical assistance to school districts which are considering reorganization options.

Source: Laws 1988, LB 940, § 1; R.S.1943, (1994), § 79-426.27; Laws 1996, LB 900, § 150; Laws 1999, LB 272, § 29; Laws 2005, LB 126, § 9; Referendum 2006, No. 422.

79-402 Reorganization of school districts; requirements. (1) By July 1, 1993, all taxable property and all elementary and high school students shall be in school systems which offer education in grades kindergarten through twelve. For purposes of meeting such requirement, a Class I district or portion thereof which is part of a Class VI district and a Class I district or portion thereof affiliated with one or more Class II, III, IV, or V districts shall be considered to include all taxable property and all elementary and high school students within a school system which offers education in grades kindergarten through twelve.

(2) Effective July 1, 1993, with the full implementation of section 79-1077, the Legislature will have attained its school reorganization goals for Class I districts as described in section 79-401.

Source: Laws 1990, LB 259, § 1; Laws 1991, LB 511, § 24; Laws 1992, LB 245, § 29; Laws 1993, LB 348, § 14; R.S.1943, (1994), § 79-426.28; Laws 1996, LB 900, § 151; Laws 2005, LB 126, § 10; Referendum 2006, No. 422.

79-403 Creation of new district; requirements. (1) Except as provided in subsections (2) and (3) of this section, no new school district shall be created unless such district provides instruction in kindergarten through grade twelve.

(2) A new Class VI school district may be created if:

(a) Such Class VI school district will include at least two or more previously existing Class II or Class III school districts, except that if a reorganization petition for formation of a Class VI school district is initiated by a petition signed by fifty-five percent of the legal voters of a Class II or III school district, then such Class VI school district may include only one Class II or III school district; and

(b) The enrollment of the new Class VI school district is (i) at least one hundred twenty-five pupils if the district offers instruction in grades nine through twelve, (ii) at least one hundred seventy-five pupils if the district offers instruction in grades seven through twelve, or (iii) at least two hundred students if the district offers instruction in grades six through twelve, except that if such district will have population density of less than three persons per square mile, then the enrollment shall be at least seventy-five students if the district offers instruction in grades nine through twelve, at least one hundred students if the district offers instruction in grades seven through twelve, or at least one hundred twenty-five students if the district offers instruction in grades six through twelve.

(3) One or more new Class I districts may be created as a part of a reorganization petition pursuant to subsection (2) of this section.

Source: Laws 1969, c. 703, § 1, p. 2702; Laws 1988, LB 940, § 2; Laws 1994, LB 1021, § 1; R.S.1943, (1994), § 79-102.01; Laws 1996, LB 900, § 152; Laws 1997, LB 806, § 5; Laws 2003, LB 394, § 2; Laws 2005, LB 126, § 11; Referendum 2006, No. 422.

79-404 Merger of Class I districts within boundaries of Class VI district; not prohibited. Section 79-403 does not prohibit the merger of Class I districts or parts of Class I districts within the boundaries of a Class VI district.

Source: Laws 1969, c. 703, § 2, p. 2703; R.S.1943, (1994), § 79-102.02; Laws 1996, LB 900, § 153; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

(b) LEGAL STATUS, FORMATION, AND TERRITORY

79-405 District; body corporate; powers; name. Every duly organized school district shall be a body corporate and possess all the usual powers of a corporation for public purposes, may sue and be sued, and may purchase, hold, and sell such personal and real estate as the law allows. The county in which the principal office of the school district is located together with the school district number assigned pursuant to section 79-307 shall constitute the corporate name of the school district, such as County School District

Source: Laws 1881, c. 78, subdivision I, § 2, p. 331; R.S.1913, § 6701; C.S.1922, § 6239; C.S.1929, § 79-102; R.S.1943, § 79-102; Laws 1949, c. 256, § 40, p. 706; Laws 1961, c. 396, § 2, p. 1204; Laws 1988, LB 1142, § 4; R.S.1943, (1994), § 79-401; Laws 1996, LB 900, § 154; Laws 2005, LB 126, § 12; Referendum 2006, No. 422.

Cross Reference

For recovery of public money, see section 77-2363.

79-406 Class II school district creation; board. A Class II school district shall be created whenever a Class I school district determines to establish a high school by a majority vote of the legal voters at an annual or special meeting.

The members of the school board serving when it is decided to establish a high school shall continue in office until the first regular meeting of the board in January following the next statewide general election. The Class II district school board shall be elected pursuant to section 32-542.

Source: Laws 1996, LB 900, § 155; Laws 1996, LB 967, § 4; Laws 1997, LB 345, § 8; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

Cross Reference

Discontinuation of high school, change to Class I school district, see section 79-472.

For qualifications of members of board of education, see section 79-543.

Limitation on creation of Class II school district from a Class I school district, see section 79-472.

Vacancies, see section 79-545.

79-407 Class III school district; boundaries; body corporate; powers. The territory within the corporate limits of each incorporated city or village in the State of Nebraska that is not in part within the boundaries of a learning community, together with such additional territory and additions to such city or village as may be added thereto, as declared by ordinances to be boundaries of such city or village, having a population of more than one thousand and less than one hundred fifty thousand inhabitants, including such adjacent territory as now is or hereafter may be attached for school purposes, shall constitute a Class III school district, except that nothing in this section shall be construed to change the boundaries of any school district that is a member of a learning community. The school district shall be a body corporate and possess all the usual powers of a corporation for public purposes and may sue and be sued, purchase, hold, and sell such personal and real property, and control such obligations as are authorized by law.

Source: Laws 1881, c. 78, subdivision XIV, § 1, p. 376; Laws 1883, c. 72, § 18, p. 296; Laws 1897, c. 69, § 1, p. 315; Laws 1909, c. 128, § 1, p. 472; R.S.1913, § 6948; Laws 1917, c. 128, § 1, p. 309; C.S.1922, § 6582; C.S.1929, § 79-2501; R.S.1943, § 79-2501; Laws 1949, c. 256, § 232, p. 767; Laws 1959, c. 382, § 4, p. 1325; Laws 1967, c. 541, § 1, p. 1782; Laws 1976, LB 383, § 1; Laws 1980, LB 743, § 3; Laws 1981, LB 16, § 2; Laws 1983, LB 465, § 1; Laws 1984, LB 908, § 1; Laws 1988, LB 1142, § 6; Laws 1988, LB 835, § 1; R.S.1943, (1994), § 79-801; Laws 1996, LB 900, § 156; Laws 1997, LB 345, § 9; Laws 1998, LB 629, § 2; Laws 2005, LB 126, § 13; Laws 2006, LB 1024, § 21; Referendum 2006, No. 422.

Cross Reference

Annexation by change of city boundaries, see section 79-473.

79-408 Class IV school district; boundaries; body corporate; powers; retirement plans; restrictions. The territory now or hereafter embraced within each incorporated city of the primary class in the State of Nebraska that is not in part within the boundaries of a learning community, such adjacent territory as now or hereafter may be included therewith for

school purposes, and such territory not adjacent thereto as may have been added thereto by law shall constitute a Class IV school district, except that nothing in this section shall be construed to change the boundaries of any school district that is a member of a learning community. A Class IV school district shall be a body corporate and possess all the usual powers of a corporation for public purposes, may sue and be sued, and may purchase, hold, and sell such personal and real estate and contract such obligations as are authorized by law. The powers of a Class IV district include, but are not limited to, the power to adopt, administer, and amend from time to time such retirement, annuity, insurance, and other benefit plans for its present and future employees after their retirement, or any reasonable classification thereof, as may be deemed proper by the board of education. The board of education shall not establish a retirement system for new employees supplemental to the School Retirement System of the State of Nebraska.

The title to all real or personal property owned by such school district shall, upon the organization of the school district, vest immediately in the school district so created. The board of education shall have exclusive control of all property belonging to the school district.

In the discretion of the board of education, funds accumulated in connection with a retirement plan may be transferred to and administered by a trustee or trustees to be selected by the board of education, or if the retirement plan is in the form of annuity or insurance contracts, such funds, or any part thereof, may be paid to a duly licensed insurance carrier or carriers selected by the board of education. Funds accumulated in connection with any such retirement plan, and any other funds of the school district which are not immediately required for current needs or expenses, may be invested and reinvested by the board of education or by its authority in securities of a type permissible either for the investment of funds of a domestic legal reserve life insurance company or for the investment of trust funds, according to the laws of the State of Nebraska.

Source: Laws 1917, c. 225, § 1, p. 550; C.S.1922, § 6610; C.S.1929, § 79-2601; R.S.1943, § 79-2601; Laws 1947, c. 294, § 1(1), p. 907; Laws 1949, c. 256, § 244, p. 772; Laws 1963, c. 489, § 1, p. 1561; Laws 1971, LB 475, § 1; Laws 1988, LB 1142, § 7; R.S.1943, (1994), § 79-901; Laws 1996, LB 900, § 157; Laws 2005, LB 126, § 14; Laws 2006, LB 1024, § 22; Referendum 2006, No. 422.

79-409 Class V school district; body corporate; powers. Each incorporated city of the metropolitan class in the State of Nebraska shall contain at least one Class V school district. A Class V school district shall be a body corporate and possess all the usual powers of a corporation for public purposes and may sue and be sued, purchase, hold, and sell such personal and real property, and control such obligations as are authorized by law.

Source: Laws 1891, c. 45, § 1, p. 317; R.S.1913, § 7007; C.S.1922, § 6638; C.S.1929, § 79-2701; R.S.1943, § 79-2701; Laws 1947, c. 296, § 1, p. 910; Laws 1949, c. 256, § 248, p. 774; Laws 1988, LB 1142, § 8; R.S.1943, (1994), § 79-1001; Laws 1996, LB 900, § 158; Laws 2005, LB 126, § 15; Laws 2006, LB 1024, § 23; Referendum 2006, No. 422.

79-410 Class VI school district; classification. All school districts organized as of August 27, 1949, as rural high school districts or as county high school districts and all school districts formed as high school districts only shall be Class VI school districts.

Source: Laws 1949, c. 256, § 294, p. 789; R.S.1943, (1994), § 79-1101; Laws 1996, LB 900, § 159; Laws 2005, LB 126, § 16; Referendum 2006, No. 422.

79-411 Class VI school district; junior-senior high school district created; procedure; vote required. The legal voters of any Class VI school district may, by a fifty-five percent majority affirmative vote of those voting on the issue at a special election of the district, extend the grade offerings of that district to include grades seven and eight or grades six through eight. Such election shall be conducted by the county clerk or election commissioner in accordance with the Election Act. If the issue receives such fifty-five percent majority affirmative vote, the school district shall then be known as a Class VI junior-senior high school district and shall be supported in the same manner as was provided for the support of the district previous to the extension of its grade offerings. In such an election, the legal voters of all Class I school districts in which there is located an incorporated city or village shall vote separately and the remaining Class I school districts shall vote separately as a unit either for a plan for the individual district or with more districts as determined by the vote by the election. Fifty-five percent of the votes cast in each voting unit shall be in favor of the proposition to put such a plan into operation.

Source: Laws 1961, c. 405, § 1, p. 1222; Laws 1972, LB 661, § 87; Laws 1994, LB 76, § 606; R.S.1943, (1994), § 79-1109; Laws 1996, LB 900, § 160; Laws 1997, LB 345, § 10; Laws 1997, LB 347, § 7; Laws 2003, LB 394, § 3; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

Cross Reference

Election Act, see section 32-101.

(c) PETITION PROCESS FOR REORGANIZATION

79-413 School districts; creation from other school districts; change of boundaries; affiliation; conditions; petition method; procedure. (1) The State Committee for the Reorganization of School Districts created under section 79-435 may create a new school district from other districts, change the boundaries of any district that is not a member of a learning community, or affiliate a Class I district or portion thereof with one or more existing Class II, III, IV, or V districts upon receipt of petitions signed by sixty percent of the legal voters of each district affected. If the petitions contain signatures of at least sixty-five percent of the legal voters of each district affected, the state committee shall approve the petitions. When area is added to a Class VI district or when a Class I district which is entirely or partially within a Class VI district is taken from the Class VI district, the Class VI district shall be deemed to be an affected district.

Any petition of the legal voters of a Class I district in which no city or village is situated which is commenced after January 1, 1996, and proposes the dissolution of the Class I district and the attachment of a portion of it to two or more districts shall require signatures of more than fifty percent of the legal voters of such Class I district. If the state committee determines

that such petition contains valid signatures of more than fifty percent of the legal voters of such Class I district, the state committee shall grant the petition.

(2)(a) Petitions proposing to change the boundaries of existing school districts that are not members of a learning community through the transfer of a parcel of land, not to exceed six hundred forty acres, shall be approved by the state committee when the petitions involve the transfer of land between Class I, II, III, or IV school districts or when there would be an exchange of parcels of land between Class I, II, III, or IV school districts and the petitions have the approval of at least sixty-five percent of the school board of each affected district. If the transfer of the parcel of land is from a Class I school district to one or more Class II, III, IV, V, or VI school districts of which the parcel is not a part or with which the parcel is not affiliated, any Class II, III, IV, V, or VI school district of which the parcel is not a part or with which the parcel is affiliated shall be deemed an affected district.

(b) The state committee shall not approve a change of boundaries pursuant to this section relating to affiliation of school districts if twenty percent or more of any tract of land under common ownership which is proposing to affiliate is not contiguous to the high school district with which affiliation is proposed unless (i) one or more resident students of the tract of land under common ownership has attended the high school program of the high school district within the immediately preceding ten-year period or (ii) approval of the petition or plan would allow siblings of such resident students to attend the same school as the resident students attended.

(3)(a) Petitions proposing to create a new school district, to change the boundary lines of existing school districts that are not members of a learning community, to create an affiliated school system, or to affiliate a Class I district in part and to join such district in part with a Class VI district, any of which involves the transfer of more than six hundred forty acres, shall, when signed by at least sixty percent of the legal voters in each district affected, be submitted to the state committee. In the case of a petition for affiliation or a petition to affiliate in part and in part to join a Class VI district, the state committee shall review the proposed affiliation subject to sections 79-425 and 79-426. The state committee shall, within forty days after receipt of the petition, hold one or more public hearings and review and approve or disapprove such proposal.

(b) The state committee shall also review and approve or disapprove incentive payments under section 79-1010.

(c) If there is a bond election to be held in conjunction with the petition, the state committee shall hold the petition until the bond election has been held, during which time names may be added to or withdrawn from the petitions. The results of the bond election shall be certified to the state committee.

(d) If the bond election held in conjunction with the petition is unsuccessful, no further action on the petition is required. If the bond election is successful, within fifteen days after receipt of the certification of the bond election results, the state committee shall approve the petition and notify the county clerk to effect the changes in district boundary lines as set forth in the petitions.

(4) Any person adversely affected by the changes made by the state committee may appeal to the district court of any county in which the real estate or any part thereof involved in the dispute is located. If the real estate is located in more than one county, the court in which an appeal is first perfected shall obtain jurisdiction to the exclusion of any subsequent appeal.

(5) A signing petitioner may withdraw his or her name from a petition and a legal voter may add his or her name to a petition at any time prior to the end of the period when the petition is held by the state committee. Additions and withdrawals of signatures shall be by notarized affidavit filed with the state committee.

Source: Laws 1881, c. 78, subdivision I, § 4, p. 332; Laws 1883, c. 72, § 1, p. 288; Laws 1885, c. 79, § 1, p. 319; Laws 1889, c. 78, § 1, p. 539; Laws 1895, c. 58, § 1, p. 221; Laws 1901, c. 59, § 1, p. 429; Laws 1909, c. 117, § 1, p. 451; R.S.1913, § 6703; C.S.1922, § 6241; Laws 1923, c. 63, § 1, p. 190; Laws 1925, c. 177, § 1, p. 461; C.S.1929, § 79-104; Laws 1931, c. 145, § 1, p. 396; C.S.Supp.,1941, § 79-104; Laws 1943, c. 197, § 1(2), p. 659; R.S.1943, § 79-105; Laws 1949, c. 256, § 41, p. 706; Laws 1951, c. 276, § 2, p. 928; Laws 1953, c. 295, § 1, p. 999; Laws 1955, c. 315, § 3, p. 973; Laws 1957, c. 342, § 1, p. 1181; Laws 1959, c. 385, § 1, p. 1334; Laws 1963, c. 471, § 1, p. 1511; Laws 1963, c. 473, § 1, p. 1519; Laws 1963, c. 474, § 1, p. 1522; Laws 1963, c. 475, § 1, p. 1525; Laws 1963, c. 472, § 1, p. 1514; Laws 1967, c. 529, § 1, p. 1757; Laws 1971, LB 468, § 1; Laws 1984, LB 1098, § 1; Laws 1990, LB 259, § 5; Laws 1991, LB 511, § 11; Laws 1992, LB 245, § 16; Laws 1992, LB 719, § 1; Laws 1996, LB 604, § 4; R.S.1943, (1994), § 79-402; Laws 1996, LB 900, § 162; Laws 1996, LB 1050, § 2; Laws 1997, LB 806, § 6; Laws 1999, LB 272, § 30; Laws 2001, LB 302, § 1; Laws 2005, LB 126, § 17; Laws 2006, LB 1024, § 24; Referendum 2006, No. 422.

79-415 Changes in boundaries; creation of new district; affiliation; how initiated. (1) In addition to the petitions of legal voters pursuant to section 79-413, changes in boundaries and the creation of a new school district from other districts may be initiated and accepted by the school board or board of education of any district that is not a member of a learning community.

(2) In addition to the petitions of legal voters pursuant to section 79-413, the affiliation of a Class I district or portion thereof with one or more Class II, III, IV, or V districts may be initiated and accepted by:

- (a) The board of education of any Class II, III, IV, or V district; and
- (b) The school board of any Class I district in which is located a city or incorporated village.

Source: Laws 1971, LB 468, § 2; Laws 1990, LB 259, § 6; Laws 1991, LB 511, § 12; Laws 1992, LB 245, § 17; R.S.1943, (1994), § 79-402.03; Laws 1996, LB 900, § 164; Laws 1997, LB 806, § 7; Laws 2005, LB 126, § 18; Laws 2006, LB 1024, § 25; Referendum 2006, No. 422.

79-416 School districts; merger or affiliation; petition. When the legal voters of a Class I or Class II school district that is not a member of a learning community and in which no city or village is located petition to merge in whole or in part with a Class I or Class II district, the merger may be accepted by petition of the school board of the accepting district. When the legal voters of a Class I district petition to affiliate in whole or in part with one or more Class II, III, IV, or V districts, such affiliation may be accepted or rejected by petition of the school board or board of education of any such district, but in either case the petition to affiliate shall be accepted or rejected within sixty days after the date of receipt of the petition by the school board or board of education of such district.

Source: Laws 1971, LB 468, § 3; Laws 1990, LB 259, § 7; Laws 1991, LB 511, § 13; Laws 1992, LB 245, § 18; R.S.1943, (1994), § 79-402.04; Laws 1996, LB 900, § 165; Laws 2005, LB 126, § 19; Laws 2006, LB 1024, § 26; Referendum 2006, No. 422.

79-417 Class I school district; merger with certain Class I school districts; petition. When the legal voters of a Class I school district petition to merge with a Class I district with a six-member school board, such merger may be accepted by petition of the school board of the accepting district.

Source: Laws 1971, LB 468, § 4; R.S.1943, (1994), § 79-402.05; Laws 1996, LB 900, § 166; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

79-418 Changes in boundaries; creation of new school district; petition; requirements. Petitions presented pursuant to sections 79-415 to 79-417 shall be subject to the same requirements for content, hearings, notice, review, and appeal as petitions submitted pursuant to section 79-413, except that a petition presented pursuant to section 79-415 shall not become effective unless it is approved by a vote of a majority of the members of the State Committee for the Reorganization of School Districts. Any person adversely affected by the disapproval shall have the right of appeal under section 79-413.

Source: Laws 1971, LB 468, § 5; Laws 1984, LB 942, § 1; R.S.1943, (1994), § 79-402.06; Laws 1996, LB 900, § 167; Laws 1997, LB 806, § 8; Laws 1999, LB 272, § 32; Laws 2005, LB 126, § 20; Referendum 2006, No. 422.

79-419 Districts; creation from other districts; petition; contents. (1) When a new district is to be created from other districts as provided in section 79-413, the petition shall contain:

- (a) A description of the proposed boundaries of the reorganized districts;
- (b) A summary of the terms on which reorganization is to be made between the reorganized districts, which terms may include a provision for initial school board districts or wards within the proposed district for the appointment of the first school board and also for the first election as provided in section 79-451, which proposed initial school board districts or wards shall be determined by the State Committee for the Reorganization of School Districts taking into consideration population and valuation, and a determination of the terms of the board members first appointed to membership of the board of the newly reorganized district;
- (c) A map showing the boundaries of established school districts and the boundaries proposed under any plan or plans of reorganization;
- (d) A separate statement as to whether the reorganization is contingent upon the success of a bond election held in conjunction with the reorganization;
- (e) An affidavit from the county clerk or election commissioner regarding the validity of the signatures on the petition; and
- (f) Such other matters as the petitioners determine proper to be included. Any petition for the creation of a new Class VI district shall designate whether such district shall include high school grades only, grades seven through twelve, or grades six through twelve.

(2) A petition under subsection (1) of this section may contain provisions for the holding of school within existing buildings in the newly reorganized district and that a school constituted under this section shall be maintained from the date of reorganization unless the legal voters served by the school vote by a majority vote for discontinuance of the school.

Source: Laws 1963, c. 475, § 2, p. 1528; R.R.S.1943, (1966), § 79-402.01; Laws 1971, LB 468, § 6; Laws 1985, LB 662, § 26; R.S.1943, (1994), § 79-402.07; Laws 1996, LB 900, § 168; Laws 1997, LB 806, § 9; Laws 1999, LB 272, § 33; Laws 2003, LB 394, § 4; Laws 2005, LB 126, § 21; Referendum 2006, No. 422.

79-422 Change in boundary lines; affiliation; bonded indebtedness; treatment. (1) Bonded indebtedness approved by legal voters prior to any change in school district boundary lines pursuant to sections 79-413 to 79-421 shall remain the obligation of the school district voting such bonds unless otherwise specified in the petitions. When a district is dissolved by petitions and the area is attached to two or more districts, the petitions shall specify the disposition of assets and unbonded obligations of the original district.

(2) Bonded indebtedness approved by legal voters for high school facilities prior to the establishment of an affiliation shall remain the obligation of the high school district unless otherwise specified in the petitions.

Source: Laws 1971, LB 468, § 10; Laws 1990, LB 259, § 11; Laws 1993, LB 348, § 13; R.S.1943, (1994), § 79-402.11; Laws 1996, LB 900, § 171; Laws 2005, LB 126, § 22; Referendum 2006, No. 422.

79-423 School district boundaries; legal voters; vote at district meetings or district elections. In Class I, II, III, IV, and VI school districts, school district boundaries may comprise all or any part of a precinct or ward in any county or counties, and every legal voter of the school district shall be entitled to vote at any school district meeting or school district election.

Source: Laws 1974, LB 897, § 12; R.S.1943, (1994), § 79-402.12; Laws 1996, LB 900, § 172; Laws 1997, LB 345, § 12; Laws 2005, LB 126, § 23; Referendum 2006, No. 422.

79-424 Petition or plan for affiliation; procedures applicable. A Class I school district or portion thereof which comes within the provisions of section 79-431 may file a petition for affiliation pursuant to section 79-413, 79-415, or 79-416 or a plan for affiliation pursuant to the Reorganization of School Districts Act with the State Committee for the Reorganization of School Districts to affiliate with one or more Class II, III, IV, or V districts, or to affiliate in part with one or more Class II, III, IV, or V districts and in part to become part of one or more Class VI districts. Affiliation shall be accomplished pursuant to any of the procedures prescribed in the act and sections 79-413 to 79-419.

Source: Laws 1990, LB 259, § 4; Laws 1991, LB 511, § 14; Laws 1992, LB 245, § 19; R.S.1943, (1994), § 79-402.13; Laws 1996, LB 900, § 173; Laws 1997, LB 347, § 8; Laws 1999, LB 272, § 36; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

Cross Reference

Reorganization of School Districts Act, see section 79-432.

79-425 Petition or plan for affiliation; resubmission; procedure. If a petition for affiliation pursuant to section 79-413, 79-415, or 79-416 or plan for affiliation proposed under the Reorganization of School Districts Act is rejected by the school board or the legal voters of a Class II, III, IV, or V school district, such petition or plan may be resubmitted after sixty days from the date of the rejection, and the board or legal voters receiving such petition or plan for affiliation shall either accept or reject such petition or plan within sixty days after the date of receipt of such petition or plan. If the petition or plan for affiliation is again rejected by the board or legal voters of such district, the State Committee for the Reorganization of School Districts shall hold a hearing pursuant to the procedures provided in section 79-413 and, within ten days after such hearing, make a determination whether to approve or reject the affiliation.

Source: Laws 1990, LB 259, § 8; Laws 1991, LB 511, § 15; Laws 1992, LB 245, § 20; R.S.1943, (1994), § 79-402.14; Laws 1996, LB 900, § 174; Laws 1999, LB 272, § 37; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

Cross Reference

Reorganization of School Districts Act, see section 79-432.

79-426 Petition or plan for affiliation; state committee; powers and duties. (1) The State Committee for the Reorganization of School Districts, when considering a petition or a plan to affiliate a Class I school district or portion thereof with one or more Class II, III, IV, or V school districts, shall consider the traditional high school attendance patterns of resident students of such Class I district. The state committee may reject a petition or plan to affiliate only for the reasons stated in subsection (2) of this section.

(2) The state committee may reject a petition or plan for affiliation when:

(a) No Class I district resident student has attended the high school program of the Class II, III, IV, or V district with which an affiliation is proposed during the immediately preceding ten-year period;

(b) The affiliation would require the construction of new high school facilities; or

(c) The affiliation would result in assignment of less than forty percent of the valuation of the Class I district to a high school district which over the immediately preceding five-year period has educated eighty percent or more of the students from such Class I district.

(3) The state committee shall reject a petition or plan for affiliation when twenty percent or more of any tract of land under common ownership which is proposing to affiliate is not contiguous to the high school district with which affiliation is proposed. The state committee shall not reject a petition or plan under this subsection if (a) one or more resident students of the tract of land under common ownership has attended the high school program of the high school district within the immediately preceding ten-year period or (b) approval of the petition or plan would allow siblings of such resident students to attend the same school as the resident students attended.

(4) A rejected petition shall stand rejected notwithstanding that it has been signed by over sixty-five percent of the legal voters of the petitioning Class I district.

Source: Laws 1990, LB 259, § 9; Laws 1991, LB 511, § 16; Laws 1992, LB 245, § 21; Laws 1996, LB 604, § 5; R.S.1943, (1994), § 79-402.15; Laws 1996, LB 900, § 175; Laws 1999, LB 272, § 38; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

79-427 Petition or plan for affiliation; contents. A petition for affiliation pursuant to sections 79-413, 79-415, and 79-416 and a plan for affiliation pursuant to the Reorganization of School Districts Act shall contain (1) a description and a map of the proposed boundaries of the affiliated school system and (2) terms of the affiliation, including (a) coordination of elementary curriculum subject to section 79-716 and (b) provision for the establishment and maintenance of an advisory committee as prescribed by section 79-4,103. An affiliation plan or a petition may include provisions allowing parents to continue educating their children in the district in which they currently have children enrolled with reimbursement to be paid to the receiving district from the affiliated high school district based on the per pupil cost for high school students of such districts as reported on the preceding year's annual financial report.

Source: Laws 1990, LB 259, § 10; Laws 1991, LB 511, § 17; Laws 1992, LB 245, § 22; R.S.1943, (1994), § 79-402.16; Laws 1996, LB 900, § 176; Laws 1999, LB 272, § 39; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

Cross Reference

Reorganization of School Districts Act, see section 79-432.

79-431 Affiliation; districts subject to dissolution; merger authorized; state committee; duties; districts which become Class I districts and dissolved districts; actions required. (1) Any Class I school district which is part of a Class VI district or districts or any Class I district or portion thereof which is affiliated or affiliated in part and also part of a Class VI district or districts and which (a) becomes subject to dissolution pursuant to section 79-470, 79-498, or 79-598 or (b) otherwise dissolves, unless otherwise prescribed in the affiliation petition, shall be merged with another affiliated Class I district, be merged with a Class II, III, IV, or V district, or be merged with a Class I district which is part of a Class VI district or districts. Any such district or portion thereof which fails to comply with this subsection shall be dissolved and attached to an existing Class II, III, IV, or V district by the State Committee for the Reorganization of School Districts under section 79-498. Any such district or portion thereof which was affiliated shall retain its original affiliation, and any portion of such district which was part of a Class VI district shall remain part of such Class VI district. Any school district which fails to comply with the provisions of subsection (1) of section 79-402 shall be dissolved by the state committee and attached to an existing Class II, III, IV, or V district.

(2) A Class II, III, IV, or V district which becomes a Class I district pursuant to section 79-472 or any other state law shall merge with a Class II, III, IV, or V district, affiliate with one or more Class II, III, IV, or V districts, become part of one or more Class VI districts, or affiliate in part with one or more Class II, III, IV, or V districts and in part become part of one or more Class VI districts.

(3) If an affiliated Class II, III, IV, or V district dissolves, unless otherwise stated in the affiliation petition, any portions of a Class I district that are affiliated with such district may affiliate with another Class II, III, IV, or V district, merge with any Class I, II, III, IV, or V district, or become part of a Class VI district.

(4) If a Class VI district dissolves, any Class I district or portions thereof which are part of such district may affiliate with a Class II, III, IV, or V district, merge with any Class I, II, III, IV, or V district, or become part of another Class VI district.

Source: Laws 1990, LB 259, § 28; Laws 1991, LB 511, § 21; Laws 1992, LB 245, § 26; Laws 1992, LB 1001, § 12; R.S.1943, (1994), § 79-402.20; Laws 1996, LB 900, § 180; Laws 1997, LB 347, § 9; Laws 1997, LB 806, § 10; Laws 1999, LB 272, § 40; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

(d) REORGANIZATION OF SCHOOL DISTRICTS ACT

79-433 Terms, defined. For purposes of the Reorganization of School Districts Act, unless the context otherwise requires:

(1) Reorganization of school districts means the formation of new school districts, the alteration of boundaries of established school districts that are not members of a learning community, the affiliation of school districts, and the dissolution or disorganization of established school districts through or by means of any one or combination of the methods set out in section 79-434; and

(2) State committee means the State Committee for the Reorganization of School Districts created by section 79-435.

Source: Laws 1949, c. 249, § 1, p. 673; Laws 1963, c. 479, § 1, p. 1536; Laws 1990, LB 259, § 12; R.S.1943, (1994), § 79-426.01; Laws 1996, LB 900, § 182; Laws 1999, LB 272, § 41; Laws 2005, LB 126, § 24; Laws 2006, LB 1024, § 27; Referendum 2006, No. 422.

79-434 Reorganization of school districts; methods. Reorganization of school districts may be accomplished through or by means of any one or more of the following methods: (1) The creation of new districts; (2) the uniting of one or more established districts; (3) the subdivision of one or more established districts; (4) the transfer and attachment to an established district of a part of the territory of one or more districts; (5) the affiliation of a Class I district or portion thereof with one or more Class II, III, IV, or V districts; (6) the changing of boundaries of a Class VI district; and (7) the dissolution or disorganization of an established district for any of the reasons specified by law.

Source: Laws 1949, c. 249, § 2, p. 674; Laws 1990, LB 259, § 13; Laws 1991, LB 511, § 22; Laws 1992, LB 245, § 27; R.S.1943, (1994), § 79-426.02; Laws 1996, LB 900, § 183; Laws 2005, LB 126, § 25; Referendum 2006, No. 422.

79-435 State Committee for the Reorganization of School Districts; members; appointment; term; qualifications; expenses. The State Committee for the Reorganization of School Districts is created. The state committee shall be composed of six members. The Commissioner of Education shall be a member of the committee ex officio and shall serve as a nonvoting member of the committee. Within thirty days after September

18, 1955, the State Board of Education, by a resolution adopted with the assent of a majority of its members, shall appoint the remaining five members of the state committee, one each for terms of one, two, three, four, and five years respectively. As the term of each member expires, a successor shall be appointed in the same manner for a term of five years. Three members of the state committee shall at all times be laypersons, and two members shall at all times be persons holding teachers' certificates issued by the authority of the State of Nebraska. Vacancies in the membership of the state committee shall be filled for the unexpired term by appointment in the same manner as the original appointment to membership. Members of the state committee shall serve without compensation but shall be reimbursed for expenses necessarily incurred in the performance of their duties, as provided in sections 81-1174 to 81-1177 and paid from funds appropriated by the Legislature to the office of the State Board of Education. The State Board of Education shall adopt and promulgate rules and regulations for the state committee to carry out its duties as provided by law.

Source: Laws 1949, c. 249, § 3, p. 674; Laws 1955, c. 311, § 1, p. 956; Laws 1981, LB 204, § 154; R.S.1943, (1994), § 79-426.03; Laws 1996, LB 900, § 184; Laws 1999, LB 272, § 42; Laws 2005, LB 126, § 26; Referendum 2006, No. 422.

79-443 State committee; plan of reorganization; contents. After one or more public hearings have been held, the state committee may approve a plan or plans of reorganization. Such plan shall contain:

- (1) A description of the proposed boundaries of the reorganized districts;
- (2) A summary of the reasons for each proposed change, realignment, or adjustment of the boundaries. If such plan provides for the creation of a new Class VI district, it shall designate whether such district shall include high school grades only or be known as a Class VI junior-senior high school district as described in section 79-411;
- (3) A summary of the terms on which reorganization is to be made between the reorganized districts. Such terms shall include a provision for initial school board districts or wards within the proposed district, which proposed initial school board districts or wards shall be determined by the state committee taking into consideration population and valuation, and a determination of the terms of the board members first appointed to membership on the board of the newly reorganized district;
- (4) A separate statement as to whether the reorganization is contingent upon the success of a bond election held in conjunction with the reorganization;
- (5) A statement of the findings with respect to the location of schools, the utilization of existing buildings, the construction of new buildings, and the transportation requirements under the proposed plan of reorganization. The plan may contain provisions for the holding of school within existing buildings in the newly reorganized district and that a school constituted under this section shall be maintained from the date of reorganization unless the legal voters served by the school vote by a majority vote for discontinuance of the school;
- (6) A map showing the boundaries of established school districts and the boundaries proposed under any plan or plans of reorganization; and

(7) Such other matters as the state committee determines proper to be included.

Source: Laws 1949, c. 249, § 11, p. 677; Laws 1963, c. 480, § 1, p. 1546; Laws 1963, c. 479, § 6, p. 1540; Laws 1985, LB 662, § 28; R.S.1943, (1994), § 79-426.11; Laws 1996, LB 900, § 192; Laws 1997, LB 806, § 18; Laws 1999, LB 272, § 46; Laws 2005, LB 126, § 27; Referendum 2006, No. 422.

79-447 Plan of reorganization; special election; notice; contents; conduct; separate voting units; approval of plan. (1) Not less than thirty nor more than sixty days after the designation of a final approved plan under section 79-446, the proposition of the adoption or rejection of the proposed plan of reorganization shall be submitted at a special election to all the legal voters of districts within the county whose boundaries are in any manner changed by the plan of reorganization, including the boundaries of Class VI school districts if such plan includes a Class I school district which is entirely within a Class VI school district.

(2) Notice of the special election shall be given by the county clerk or election commissioner and shall be published in a legal newspaper of general circulation in the county at least ten days prior to the election. The election notice shall (a) state that the election has been called for the purpose of affording the legal voters an opportunity to approve or reject the plan of reorganization, (b) contain a description of the boundaries of the proposed district, and (c) contain a statement of the terms of the adjustment of property, debts, and liabilities applicable thereto.

(3) All ballots shall be prepared and the special election shall be held and conducted by the county clerk or election commissioner, and the expense of such election shall be paid by the county board or boards if more than one county is involved as provided in subsection (4) of this section. The county clerk or election commissioner shall use the duly appointed election board or appoint two judges and two clerks who shall be legal voters of the territory of the proposed school district. The election shall be held at a place or places within the proposed district determined by the county clerk or election commissioner to be convenient for the voters.

(4) If the proposed plan of reorganization involves a district under the jurisdiction of another county, the county clerk or election commissioner of the county which has the largest number of pupils residing in the proposed joint district shall give the notice required by subsection (2) of this section in a newspaper of general circulation in the territory of the proposed district and prepare the ballots and such election shall be held and conducted by the county clerk or election commissioner of each county involved in the proposed reorganization in accordance with the Election Act. Each county board shall bear a share of the total election expense in the same proportion that the number of legal voters residing in the proposed district in one county stands to the whole number of legal voters in the proposed district.

(5) In any election held as provided in this section, all districts of like class shall vote as a unit, except that Class I school districts within the boundaries of which are located an incorporated village or city shall constitute a separate voting unit and Class I school districts which do not have within their boundaries an incorporated village or city shall constitute a separate voting unit.

(6) Approval of the plan at the special election shall require a majority of all legal voters voting within each voting unit included in the proposed plan.

Source: Laws 1949, c. 249, § 15, p. 678; Laws 1951, c. 278, § 6, p. 941; Laws 1953, c. 297, § 1, p. 1003; Laws 1955, c. 311, § 6, p. 960; Laws 1957, c. 342, § 3, p. 1184; Laws 1963, c. 480, § 2, p. 1547; Laws 1963, c. 479, § 9, p. 1542; Laws 1972, LB 661, § 80; Laws 1994, LB 76, § 592; R.S.1943, (1994), § 79-426.15; Laws 1996, LB 900, § 196; Laws 1997, LB 345, § 13; Laws 1999, LB 272, § 50; Laws 2005, LB 126, § 28; Referendum 2006, No. 422.

Cross Reference

Election Act, see section 32-101.

79-449 Plan of reorganization; two or more districts; indebtedness. Whenever two or more school districts are involved in a reorganization plan, the old districts shall continue to be responsible for any indebtedness incurred before the reorganization takes place unless a different arrangement is included in the plan voted upon by the people. Bonded indebtedness incurred for high school facilities prior to the adoption of any affiliation plan shall remain the obligation of the high school district unless otherwise specified in the petitions.

Source: Laws 1949, c. 249, § 16, p. 679; Laws 1959, c. 387, § 3, p. 1341; R.S.Supp., 1961, § 79-426.16; Laws 1963, c. 479, § 11, p. 1544; Laws 1971, LB 292, § 6; Laws 1990, LB 259, § 15; R.S.1943, (1994), § 79-426.17; Laws 1996, LB 900, § 198; Laws 2005, LB 126, § 29; Referendum 2006, No. 422.

(e) DISSOLUTION OF CLASS I AND CLASS II SCHOOL DISTRICTS

79-452 Dissolution of Class I or II school district; petition; sufficient signatures; effect; plan of reorganization. A proposal to dissolve a Class I or II school district, except a Class I school district which is partly or wholly within a Class VI school district, and attach it to one or more existing Class II, III, or IV school districts that are not members of a learning community may be initiated by filing with the State Committee for the Reorganization of School Districts a petition or petitions signed by at least twenty-five percent of the legal voters of the district, together with an affidavit from the county clerk or election commissioner listing all legal voters of the district and a determination by the county clerk or election commissioner that the signatures are sufficient. The petition shall contain a plan of the proposed reorganization, an effective date, and a statement whether any existing bonded indebtedness shall remain on the property of the district which incurred it or be assumed by the enlarged district. The petition may also contain provisions for the holding of school within existing buildings in the proposed reorganized district, and when so provided, the holding of school within such buildings shall be maintained from the date of reorganization unless either the legal voters served by the school or the school board of the reorganized district votes by a majority vote for discontinuance of the school. In case of conflicting votes between the legal voters and the school board on such issue, the decision of the legal voters shall prevail. A signing petitioner shall not be permitted to withdraw his or her name from the petition after the petition has been filed. The school board of each Class II, III, or IV district to which the

merger is proposed shall also submit to the state committee a statement to the effect that a majority of the board members approve the proposal contained in the petition.

Source: Laws 1965, c. 510, § 1, p. 1629; Laws 1967, c. 530, § 1, p. 1761; Laws 1967, c. 531, § 1, p. 1764; Laws 1985, LB 662, § 29; R.S.1943, (1994), § 79-426.23; Laws 1996, LB 900, § 201; Laws 1999, LB 272, § 54; Laws 2005, LB 126, § 30; Laws 2006, LB 1024, § 42; Referendum 2006, No. 422.

79-454 Proposal; state committee; approve; election; notice. If the proposal provided for in section 79-452 has been approved by the State Committee for the Reorganization of School Districts, the state committee shall notify the school board of the Class I or II district. The school board shall, within fifteen days after the notification, set a date for a special election for the purpose of submitting the proposal to the legal voters of the district. At least twenty days' notice of such election shall be given by publication twice in a newspaper of general circulation in the district, the latest publication to be not more than one week before the election. If there is no such newspaper, notice shall be given by posting it on the door of the schoolhouse and at least four other public places throughout the district. The proposal shall not be submitted to a special election more than once in any calendar year. Legal voters may cast their ballots, written or printed, between the hours of 12 noon and 8 p.m. on the date of such election. The county clerk or election commissioner of the county which has the largest number of pupils residing in the district shall conduct such special election in accordance with the Election Act and shall record the names and residence of persons voting at the special election. The ballots shall be canvassed as provided in section 79-447.

Source: Laws 1965, c. 510, § 3, p. 1630; Laws 1967, c. 530, § 2, p. 1762; Laws 1972, LB 661, § 81; Laws 1985, LB 662, § 30; Laws 1994, LB 76, § 594; R.S.1943, (1994), § 79-426.25; Laws 1996, LB 900, § 203; Laws 1999, LB 272, § 56; Laws 2005, LB 126, § 31; Referendum 2006, No. 422.

Cross Reference

Election Act, see section 32-101.

79-455 Proposal; election; approve; county clerk; order; certificate; filing; appeal. If the proposal provided for in section 79-452 is approved by a majority of the legal voters of the school district voting on the matter, the secretary of the school board shall within five days certify the approval to the county clerk. The county clerk shall immediately notify the secretary of each Class II, III, IV, or V district affected of the action taken by the Class I or II district, and such secretary shall within ten days certify to the county clerk that the school board of the Class II, III, IV, or V district has, by a majority vote, officially approved the proposal as provided in section 79-452. The county clerk shall issue an order effecting the changes in school district boundaries in accordance with the proposal provided in section 79-452. He or she shall also file certificates with the county assessor, county treasurer, and State Committee for the Reorganization of School Districts showing the changes. An appeal may be taken from such order within twenty days after the rendition of the order in the same manner as appeals are taken from the action of the county board in allowing or disallowing claims against the county. Such appeal shall be filed in the district court for the county whose county clerk has jurisdiction of the Class I or II district. When more than one county clerk

has jurisdiction of the Class I or II district, the appeal may be filed in the district court for either of the counties.

Source: Laws 1965, c. 510, § 4, p. 1631; Laws 1967, c. 530, § 3, p. 1763; Laws 1985, LB 662, § 31; R.S.1943, (1994), § 79-426.26; Laws 1996, LB 900, § 204; Laws 1999, LB 272, § 57; Laws 2005, LB 126, § 32; Referendum 2006, No. 422.

Cross Reference

For appeal from action of county board on claim, see section 23-135.

(f) FREEHOLDERS' PETITIONS

79-458 Class II or III school district; tract of land set off from district; petition; conditions; procedure; appeal. (1) Any freeholder or freeholders, person in possession or constructive possession as vendee pursuant to a contract of sale of the fee, holder of a school land lease under section 72-232, or entrant upon government land who has not yet received a patent therefor may file a petition on or before July 15 for 2007 and on or before June 1 for all other years with a board consisting of the county assessor, county clerk, and county treasurer, asking to have any tract or tracts of land described in the petition set off from an existing Class II or III school district in which the land is situated and attached to an accredited district which is contiguous to such tract or tracts of land if:

(a) The Class II or III school district has had an average daily membership in grades nine through twelve of less than sixty for the two consecutive school fiscal years immediately preceding the filing of the petition;

(b) The Class II or III school district has voted to exceed the maximum levy established pursuant to subdivision (2)(a) of section 77-3442, which vote is effective for the school fiscal year in which the petition is filed or for the following school fiscal year;

(c) The high school is within fifteen miles on a maintained public highway or maintained public road of another high school; and

(d) Neither school district is a member of a learning community.

For purposes of determining whether a tract of land is contiguous, all petitions currently being considered by the board shall be considered together as a whole.

(2) The petition shall state the reasons for the proposed change and shall show with reference to the land of each petitioner: (a) That (i) the land described in the petition is either owned by the petitioner or petitioners or that he, she, or they hold a school land lease under section 72-232, are in possession or constructive possession as vendee under a contract of sale of the fee simple interest, or have made an entry on government land but have not yet received a patent therefor and (ii) such tract of land includes all such contiguous land owned or controlled by each petitioner; (b) that the land described in the petition is located in a Class II or III district that is not a member of a learning community, the district has had an average daily membership in grades nine through twelve of less than sixty for the two consecutive school fiscal years immediately preceding the filing of the petition, the district has voted to exceed the maximum levy established pursuant to subdivision (2)(a) of section 77-3442 as provided

in subdivision (1)(b) of this section, and the land is to be attached to an accredited school district which is contiguous to such tract or tracts of land and which is not a member of a learning community; and (c) that such petition is approved by a majority of the members of the school board of the district to which such land is sought to be attached.

(3) The petition shall be verified by the oath of each petitioner. Notice of the filing of the petition and of the hearing on such petition before the board constituted as prescribed in subsection (1) or (4) of this section shall be given at least ten days prior to the date of such hearing by one publication in a legal newspaper of general circulation in each district and by posting a notice on the outer door of the schoolhouse in each district affected thereby, and such notice shall designate the territory to be transferred. Following the filing of a petition pursuant to this section, such board shall hold a public hearing on the petition and, on or before November 1 following the filing of the petition, shall approve or disapprove the petition based on a determination of whether the petitioner has complied with all requirements of this section. If such board approves the petition, such board shall change the boundaries of the school districts so as to set off the land described in the petition and attach it to such district pursuant to the petition.

(4) Petitions requesting transfers of property across county lines shall be addressed jointly to the county clerks of the counties concerned, and the petitions shall be acted upon by the county assessors, county clerks, and county treasurers of the counties involved as one board, with the county clerk of the county from which the land is sought to be transferred acting as chairperson of the board.

(5) Appeals may be taken from the action of such board or, when such board fails to agree, to the district court of the county in which the land is located within twenty days after entry of such action on the records of the board by the county clerk of the county in which the land is located or within twenty days after November 1 if such board fails to act upon such petition, in the same manner as appeals are now taken from the action of the county board in the allowance or disallowance of claims against the county.

(6) This section does not apply to any school district located on an Indian reservation and substantially or totally financed by the federal government.

(7) If approved by the board, the transfer shall take place on January 1 next following the filing of the petition.

Source: Laws 1996, LB 900, § 207; Laws 1997, LB 710, § 3; Laws 1997, LB 806, § 22; Laws 1998, Spec. Sess., LB 1, § 11; Laws 1999, LB 272, § 58; Laws 2001, LB 797, § 10; Laws 2006, LB 1024, § 43; Laws 2007, LB219, § 1.
Effective date May 17, 2007.

Cross Reference

For appeal from action of county board on claim, see section 23-135.

(g) SPECIAL PROPERTY TRANSFERS AND DISSOLUTION AND ANNEXATION OF SCHOOL DISTRICTS

79-470 Contract for instruction; merger; effect; limitation; dissolution. (1) No Class I school district which contracts for the instruction of all of its pupils with a Class I,

II, III, IV, or V school district shall merge with another Class I school district unless such other Class I school district with which it is merging is included in the area which makes up a Class VI school district.

(2) No district shall contract for the instruction of all of its pupils with a Class II, III, IV, or V school district for more than two consecutive years.

(3) The State Committee for the Reorganization of School Districts shall dissolve and attach to a neighboring school district or districts any school district which, for two consecutive years, contracts for the instruction of all of its pupils with a Class II, III, IV, or V school district.

(4) The dissolution of any school district pursuant to this section shall be effected in the manner prescribed in section 79-498. When such dissolution would create extreme hardships on the pupils or the school district affected, the State Board of Education may, on application by the school board of the school district, waive the dissolution of the school district on an annual basis.

(5) Nothing in this section shall be construed as an extension of the limitations on contracting for the instruction of the pupils of a school district contained in section 79-598.

Source: Laws 1969, c. 703, § 3, p. 2702; Laws 1973, LB 148, § 2; Laws 1987, LB 106, § 1; R.S.1943, (1994), § 79-603; Laws 1996, LB 900, § 219; Laws 1999, LB 272, § 60; Laws 2005, LB 126, § 33; Referendum 2006, No. 422.

79-472 Class II school district; discontinue high school; affiliation; vote; Class I school district; board; election. (1)(a) If a Class II school district, by a vote of fifty-five percent of the legal voters voting at a special meeting, decides to discontinue and close the high school, the school district shall become an affiliated Class I school district on the date designated by such legal voters. Affiliation shall be accomplished pursuant to sections 79-413 to 79-427. At such meeting a decision shall be made as to when the new school board shall be elected and whether the board shall consist of three members or six members. No new Class I school district shall establish a six-member board unless the school district contains a minimum of one hundred fifty children who are five through twenty years of age. The school board of the existing Class II school district shall remain in office until the effective date for the formation of the new Class I school district.

(b) If the new school board is to consist of three members, such members shall be elected at the time of the vote to change from a Class II school district to a Class I school district or at a special meeting held not less than thirty days prior to the effective date of the change from a Class II school district to a Class I school district. At the special meeting, a treasurer shall be elected for a term of one year, a secretary for a term of two years, and a president for a term of three years, and their successors shall be elected for terms of three years each. All officers so elected shall hold their offices until successors are elected and qualified. After such change becomes effective, the school district and its officers shall have the powers of and be governed by the provisions of law applicable to Class I school districts.

(c) If the new school board is to consist of six members, such members shall be elected after the vote to change from a Class II school district to a Class I school district. The procedure for electing board members shall be as prescribed in section 32-541 or as prescribed in subsection (3) of section 79-565, except that such election may be held at any annual school meeting or at a special school meeting called for the purpose of electing school district officers.

(2) No school district may change from Class I to Class II unless that school district has an enrollment of not less than one hundred pupils in grades nine through twelve. This subsection shall not apply to any school district located on an Indian reservation and substantially or totally financed by the federal government.

Source: Laws 1881, c. 78, subdivision VI, § 1, p. 355; Laws 1885, c. 79, § 1, p. 325; Laws 1889, c. 78, § 16, p. 550; R.S.1913, § 6798; Laws 1917, c. 120, § 1, p. 295; Laws 1921, c. 79, § 1, p. 287; C.S.1922, § 6339; C.S.1929, § 79-601; R.S.1943, § 79-601; Laws 1945, c. 204, § 1, p. 615; Laws 1949, c. 256, § 230, p. 766; Laws 1953, c. 302, § 1, p. 1014; Laws 1959, c. 403, § 1, p. 1364; Laws 1969, c. 257, § 41, p. 953; Laws 1972, LB 661, § 84; Laws 1977, LB 430, § 2; Laws 1978, LB 872, § 1; Laws 1984, LB 942, § 2; Laws 1985, LB 662, § 34; Laws 1989, LB 183, § 20; Laws 1990, LB 1037, § 1; Laws 1990, LB 1090, § 15; Laws 1991, LB 511, § 54; Laws 1992, LB 245, § 60; Laws 1994, LB 76, § 599; Laws 1996, LB 604, § 7; R.S.1943, (1994), § 79-701; Laws 1996, LB 900, § 221; Laws 1997, LB 345, § 15; Laws 1999, LB 813, § 7; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

Cross Reference

Creation of Class II school district from a Class I school district, see section 79-406.

For qualifications of school board members, see section 79-543.

Vacancies, see section 79-545.

79-473 Class III school district; annexed school district territory; negotiation; election; question on ballot. (1) If the territory annexed by a change of boundaries of a city or village which lies within a Class III school district as provided in section 79-407 has been part of a Class IV or Class V school district prior to such annexation, a merger of the annexed territory with the Class III school district shall become effective only if the merger is approved by a majority of the members of the school board of the Class IV or V school district and a majority of the members of the school board of the Class III school district within ninety days after the effective date of the annexation ordinance, except that a merger shall not become effective pursuant to this section if such merger involves a school district that is a member of a learning community.

(2) Notwithstanding subsection (1) of this section, when territory which lies within a Class III school district, Class VI school district, or Class I school district which is attached to a Class VI school district or which does not lie within a Class IV or V school district is annexed by a city or village pursuant to section 79-407, the affected school board of the city or village school district and the affected school board or boards serving the territory subject to the annexation ordinance shall meet within thirty days after the effective date of the annexation ordinance if neither school district is a member of a learning community and negotiate in good faith as to which school district shall serve the annexed territory and the effective date of any transfer. During the process of negotiation, the affected boards shall consider the following criteria:

- (a) The educational needs of the students in the affected school districts;
- (b) The economic impact upon the affected school districts;

(c) Any common interests between the annexed or platted area and the affected school districts and the community which has zoning jurisdiction over the area; and

(d) Community educational planning.

If no agreement has been reached within ninety days after the effective date of the annexation ordinance, the territory shall transfer to the school district of the annexing city or village ten days after the expiration of such ninety-day period unless an affected school district petitions the district court within the ten-day period and obtains an order enjoining the transfer and requiring the boards of the affected school districts to continue negotiation. The court shall issue the order upon a finding that the affected board or boards have not negotiated in good faith based on one or more of the criteria listed in this subsection. The district court shall require no bond or other surety as a condition for any preliminary injunctive relief. If no agreement is reached after such order by the district court and additional negotiations, the annexed territory shall become a part of the school district of the annexing city or village.

(3) If, within the boundaries of the annexed territory, there exists a Class VI school, the school building, facilities, and land owned by the school district shall remain a part of the Class VI school district. If the Class VI school district from which territory is being annexed wishes to dispose of such school building, facilities, or land to any individual or political subdivision, including a Class I school district, the question of such disposition shall be placed on the ballot for the next primary or general election. All legal voters of such Class VI school district shall then vote on the question at such election. A simple majority of the votes cast shall resolve the issue.

(4) Whenever an application for approval of a final plat or replat is filed for territory which lies within the zoning jurisdiction of a city of the first or second class and does not lie within the boundaries of a Class IV or V school district, the boundaries of a school district that is a member of a learning community, the boundaries of any county in which a city of the metropolitan class is located, or the boundaries of any county that has a contiguous border with a city of the metropolitan class, the affected school board of the school district within the city of the first or second class or its representative and the affected board or boards serving the territory subject to the final plat or replat or their representative shall meet within thirty days after such application and negotiate in good faith as to which school district shall serve the platted or replatted territory and the effective date of any transfer based upon the criteria prescribed in subsection (2) of this section.

If no agreement has been reached prior to the approval of the final plat or replat, the territory shall transfer to the school district of the city of the first or second class upon the filing of the final plat unless an affected school district petitions the district court within ten days after approval of the final plat or replat and obtains an order enjoining the transfer and requiring the affected boards to continue negotiation. The court shall issue the order upon a finding that the affected board or boards have not negotiated in good faith based on one or more of the criteria listed in subsection (2) of this section. The district court shall require no bond or other surety as a condition for any preliminary injunctive relief. If no agreement is reached after

such order by the district court and additional negotiations, the platted or replatted territory shall become a part of the school district of the city of the first or second class.

For purposes of this subsection, plat and replat apply only to (a) vacant land, (b) land under cultivation, or (c) any plat or replat of land involving a substantive change in the size or configuration of any lot or lots.

(5) Notwithstanding any other provisions of this section, all negotiated agreements relative to boundaries or to real or personal property of school districts reached by the affected school boards shall be valid and binding, except that such agreements shall not be binding on reorganization plans pursuant to the Learning Community Reorganization Act.

Source: Laws 1996, LB 900, § 222; Laws 1997, LB 345, § 16; Laws 2005, LB 126, § 34; Laws 2006, LB 1024, § 48; Referendum 2006, No. 422.

Cross Reference

Learning Community Reorganization Act, see section 79-4,117.

79-477 Class VI school district; discontinuance of district; vote required; notice. A Class VI school district may be discontinued at any annual or special meeting of the district by a vote of fifty-five percent of the legal voters voting at such meeting if notice of such contemplated action is duly given in the notice or call for the meeting.

Source: Laws 1949, c. 256, § 300, p. 792; R.S.1943, (1994), § 79-1106; Laws 1996, LB 900, § 226; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

79-478 Class VI school district; disapproval by State Board of Education; Class I school district; withdrawal; vote required. If the high school in a Class VI school district is disapproved by the State Board of Education and the legal voters fail to vote to discontinue the high school in that district, the legal voters of any Class I district in the Class VI school district may vote at an annual or special meeting to withdraw from the Class VI school district and if fifty-five percent of the legal voters of such Class I district vote to withdraw from the Class VI school district, the State Committee for the Reorganization of School Districts shall order the Class I district withdrawn from the Class VI school district.

Source: Laws 1961, c. 404, § 1, p. 1221; Laws 1985, LB 662, § 35; R.S.1943, (1994), § 79-1107; Laws 1996, LB 900, § 227; Laws 1999, LB 272, § 61; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

(h) PROCEDURES AND RULES FOR NEW OR CHANGED DISTRICTS

79-479 Change of boundaries; order; conditions; transfer of assets and liabilities. (1)(a) Beginning January 1, 1992, any school district boundaries changed by the means provided by Nebraska law, but excluding the method provided by sections 79-407 and 79-473 to 79-475, shall be made only upon an order issued by the State Committee for the Reorganization of School Districts or county clerk. The state committee shall not issue an order changing boundaries relating to affiliation of school districts if twenty percent or more of any tract of land under common ownership which is proposing to affiliate is not contiguous to the high school district with which affiliation is proposed unless (i) one or more resident students of the tract of land under common ownership has attended the high school program

of the high school district within the immediately preceding ten-year period or (ii) approval of the petition or plan would allow siblings of such resident students to attend the same school as the resident students attended.

(b) The order issued by the state committee shall be certified to the county clerk of each county in which boundaries are changed and shall also be certified to the State Department of Education. Whenever the order changes the boundaries of a school district due to the transfer of land, the county assessor, the Property Tax Administrator, and the State Department of Education shall be provided with the legal description and a map of the parcel of land which is transferred. Such order shall be issued no later than June 1 and shall have an effective date no later than August 1 of the same year. For purposes of determining school district counts pursuant to sections 79-524 and 79-578 and calculating state aid allocations pursuant to the Tax Equity and Educational Opportunities Support Act, any change in school district boundaries with an effective date between June 1 and August 1 of any year shall be considered effective July 1 of such year.

(2) Unless otherwise provided by state law or by the terms of an affiliation or reorganization plan or petition which is consistent with state law, all assets, including budget authority as provided in sections 79-1023 to 79-1030, and liabilities, except bonded obligations, of school districts merged, dissolved, or annexed shall be transferred to the receiving district or districts on the basis of the proportionate share of assessed valuation received at the time of reorganization. When a Class II, III, IV, or V school district becomes a Class I school district:

(a) Which becomes part of a Class VI district which offers instruction in grades six through twelve, 37.9310 percent of the Class II, III, IV, or V district's assets and liabilities shall be transferred to the new Class I district and the remainder shall be transferred to the Class VI district or districts of which the Class I district becomes a part on the basis of the proportionate share of assessed valuation each high school district received at the time of such change in class of district;

(b) Which becomes part of a Class VI district which offers instruction in grades seven through twelve, 44.8276 percent of the Class II, III, IV, or V district's assets and liabilities shall be transferred to the new Class I district and the remainder shall be transferred to the Class VI district or districts of which the Class I district becomes a part on the basis of the proportionate share of assessed valuation each high school district received at the time of such change in class of district; or

(c) Which is affiliated or becomes part of a Class VI district which offers instruction in grades nine through twelve, 61.3793 percent of the Class II, III, IV, or V school district's assets and liabilities shall be transferred to the new Class I district and the remainder shall be transferred to the Class VI district or districts of which the Class I district becomes a part and to the high school district or districts with which the Class I district is affiliated on the basis of the proportionate share of assessed valuation each high school district received at the time of such change in class of district.

Source: Laws 1996, LB 604, § 3; Laws 1996, LB 900, § 228; Laws 1997, LB 347, § 13; Laws 1997, LB 806, § 23; Laws 1999, LB 272, § 62; Laws 1999, LB 813, § 8; Laws 2003, LB 394, § 5; Laws 2005, LB 126, § 35; Laws 2006, LB 1024, § 50; Referendum 2006, No. 422.

Cross Reference

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

79-492 Class I school district; organization of new district; first officers; term. When a new Class I school district is organized and officers are elected at any other time than at the annual meeting, the time intervening between the date of organization and the beginning of the next school year shall constitute the first year in the term of such officers.

Source: Laws 1881, c. 78, subdivision III, § 2, p. 343; Laws 1885, c. 79, § 1, p. 322; R.S.1913, § 6753; C.S.1922, § 6294; C.S.1929, § 79-302; R.S.1943, § 79-302; Laws 1949, c. 256, § 193, p. 754; R.S.1943, (1994), § 79-509; Laws 1996, LB 900, § 241; Laws 1999, LB 813, § 9; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

79-493 Class I or Class II school district; new district officers; acceptance of office. Within ten days after their election, the officers of a new Class I or Class II school district as referred to in section 79-492 shall file with the secretary a written acceptance of the offices to which they have been elected, which acceptance shall be recorded by the secretary. The office of any such officer who fails to file such acceptance within the time specified in this section shall become vacant at the expiration of such period and shall be filled by the remaining members of the board.

Source: Laws 1881, c. 78, subdivision III, § 3, p. 343; R.S.1913, § 6754; C.S.1922, § 6295; C.S.1929, § 79-303; R.S.1943, § 79-303; Laws 1949, c. 256, § 194, p. 754; R.S.1943, (1994), § 79-510; Laws 1996, LB 900, § 242; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

79-494 Class I or Class II school district; new school district; when deemed organized. Every new Class I or Class II school district described in section 79-492 shall be deemed duly organized when the majority of the officers elected at the first meeting have filed their acceptance as provided in section 79-493. A reorganized school district shall be formed, organized, and have a governing board not later than April 1 following the last legal action, as prescribed in section 79-413, 79-450, or 79-455, necessary to effect the changes in boundaries as set forth in the petition or plan of reorganization, although the physical reorganization of such reorganized school district may not take effect until the commencement of the following school year.

Source: Laws 1881, c. 78, subdivision III, § 4, p. 343; R.S.1913, § 6755; C.S.1922, § 6296; C.S.1929, § 79-304; R.S.1943, § 79-304; Laws 1949, c. 256, § 195, p. 755; Laws 1951, c. 276, § 8, p. 931; Laws 1988, LB 520, § 3; R.S.1943, (1994), § 79-511; Laws 1996, LB 900, § 243; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

79-495 Class I or Class II school district; new district; failure to organize; dissolution for failure to organize. In case the inhabitants of any new Class I or Class II school district referred to in section 79-492 fail to organize it, the State Committee for the

Reorganization of School Districts shall immediately dissolve such district and attach it to an adjoining district or districts.

Source: Laws 1881, c. 78, subdivision III, § 5, p. 344; R.S.1913, § 6756; C.S.1922, § 6297; C.S.1929, § 79-305; R.S.1943, § 79-305; Laws 1949, c. 256, § 196, p. 755; R.S.1943, (1994), § 79-512; Laws 1996, LB 900, § 244; Laws 1999, LB 272, § 67; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

(i) DEPOPULATED DISTRICTS

79-499 Class II or Class III school district; membership requirements; cooperative programs; when required; plan; contract for services; effect. (1) Commencing with the 1992-93 school year, if the fall school district membership or the average daily membership of an existing Class II or III school district shows less than thirty-five students in grades nine through twelve, the district shall submit a plan for developing cooperative programs with other high schools, including the sharing of curriculum and certificated and noncertificated staff, to the State Committee for the Reorganization of School Districts. The cooperative program plan shall be submitted by the school district by September 1 of the year following such fall school district membership or average daily membership report. A cooperative program plan shall not be required if there is no high school within fifteen miles from such district on a reasonably improved highway. The state committee shall review the plan and provide advice and communication to such school district and other high schools.

(2) If for two consecutive years the fall school district membership, or for two consecutive years the average daily membership, of an existing Class II or III school district is less than twenty-five pupils in grades nine through twelve or if for one year an existing Class II or III school district contracts with a neighboring school district or districts to provide educational services for all of its pupils in grades nine through twelve, such school district shall, except as provided in subsection (3) of this section, become a Class I school district through the order of the state committee if the high school is within fifteen miles on a reasonably improved highway of another high school.

This subsection does not apply to any school district located on an Indian reservation and substantially or totally financed by the federal government.

(3) Any Class II or III school district maintaining a four-year high school which has a fall school district membership or an average daily membership of less than twenty-five students in grades nine through twelve may contract with another school district to provide educational services for its pupils in grades nine through twelve. Such contract may continue for a period not to exceed one year. At the end of such one-year period, the school district may resume educational services for grades nine through twelve if the average daily membership in grades nine through twelve for such school district has reached at least fifty students. If the school district has not achieved such fall school district membership or average daily membership, it shall become a Class I school district by order of the state committee entered after thirty days' notice to the district but without a hearing, notwithstanding the distance on a reasonably improved highway to the nearest school district conducting a high school.

(4) For purposes of this section, when calculating fall school district membership or average daily membership, a resident school district as defined in section 79-233 shall not count students attending an option district as defined in such section and a Class II or III school district shall not count foreign exchange students and nonresident students who are wards of the court or state.

Source: Laws 1991, LB 511, § 55; Laws 1992, LB 245, § 53; R.S.1943, (1994), § 79-516.08; Laws 1996, LB 900, § 248; Laws 1996, LB 1050, § 6; Laws 1999, LB 272, § 70; Laws 2005, LB 126, § 36; Referendum 2006, No. 422.

Cross Reference

Contracting for instruction, general provisions, see section 79-598.

(j) SPECIAL PROVISIONS FOR AFFILIATED DISTRICTS

79-4,101 Additional terms, defined. For purposes of sections 10-716.01, 79-402, 79-422, 79-424 to 79-431, 79-449, 79-4,100 to 79-4,102, 79-611, and 79-1077:

(1) Elementary school facility means the educational facility used to provide services for students in grades kindergarten through eight in an affiliated school system;

(2) High school district means the Class II, III, IV, or V district which provides the high school program for an affiliated Class I district;

(3) High school facility means the educational facility used to provide services for students in grades nine through twelve in an affiliated school system;

(4) High school program means the educational services provided in an affiliated school system for grades nine through twelve; and

(5) High school students means students enrolled in a high school program.

Source: Laws 1990, LB 259, § 3; Laws 1991, LB 511, § 9; Laws 1992, LB 245, § 14; Laws 1994, LB 858, § 2; R.S.1943, (1994), § 79-101.02; Laws 1996, LB 900, § 250; Laws 2001, LB 797, § 11; Laws 2005, LB 126, § 37; Referendum 2006, No. 422.

(l) UNIFIED SYSTEM

79-4,108 Unified system; interlocal agreement; contents; application; procedure; effect. (1) Unified system means two or more Class II or III school districts participating in an interlocal agreement under the Interlocal Cooperation Act with approval from the State Committee for the Reorganization of School Districts. The interlocal agreement may include Class I districts if the entire valuation is included in the unified system. The interlocal agreement shall provide for a minimum term of three school years. The agreement shall provide that all property tax and state aid resources shall be shared by the unified system and that a board composed of school board members, with at least one school board member from each district, shall determine the general fund levy, within the limitations placed on school districts and multiple-district school systems pursuant to section 77-3442, to be applied in all participating districts and shall determine the distribution of property tax and state aid resources within the unified system. For purposes of section 77-3442, the multiple-district school system shall include all of the Class I, II, and III districts participating in the unified system and the Class I districts or portions thereof affiliated with any of the participating Class

II and III districts. The interlocal agreement shall also provide that certificated staff will be employees of the unified system. For any certificated staff employed by the unified system, tenure and seniority as of the effective date of the interlocal agreement shall be transferred to the unified system and tenure and seniority provisions shall continue in the unified system except as provided in sections 79-850 to 79-858. If a district withdraws from the unified system or if the interlocal agreement expires and is not renewed, certificated staff employed by a participating district immediately prior to the unification shall be reemployed by the original district and tenure and seniority as of the effective date of the withdrawal or expiration shall be transferred to the original district. The certificated staff hired by the unified system but not employed by a participating district immediately prior to the unification shall be subject to the reduction-in-force policy of the unified system. The interlocal agreement shall also require participating districts to pay obligations of the unified system pursuant to sections 79-850 to 79-858 on a pro rata basis based on the adjusted valuations if a district withdraws from the unified system or if the interlocal agreement expires and is not renewed. Additional provisions in the interlocal agreement shall be determined by the participating districts and shall encourage cooperation within the unified system.

(2) Application for unification shall be made to the state committee. The application shall contain a copy of the interlocal agreement signed by the president of each participating school board. The state committee shall approve or disapprove applications for unification within forty days after receipt of the application. If the interlocal agreement complies with subsection (1) of this section and all school boards of the participating districts have approved the interlocal agreement, the state committee shall approve the application. Unification agreements shall be effective on June 1 following approval from the state committee for status as a unified system or on the date specified in the interlocal agreement, except that the date shall be on or after June 1 and on or before September 1 for a specified year. The board established in the interlocal agreement may begin meeting any time after the application has been approved by the state committee.

(3) Upon granting the application for unification, the State Department of Education shall recognize the unified system as a single Class II or III district for state aid, budgeting, accreditation, enrollment of students, state programs, and reporting. The unified system shall submit a single report document for each of the reports required of school districts pursuant to Chapter 79 and shall submit a single budget document pursuant to the Nebraska Budget Act and sections 13-518 to 13-522. The class of district shall be the same as the majority of participating districts, excluding Class I districts. If there are an equal number of Class II and Class III districts in the unified system, the unified system shall be recognized by the department as a Class III district.

(4) The school districts participating in a unified system shall retain their separate identities for all purposes except those specified in this section, and participation in a unified system shall not be considered a reorganization.

Source: Laws 1998, LB 1219, § 9; Laws 1999, LB 813, § 10; Laws 2001, LB 797, § 12; Laws 2005, LB 126, § 38; Referendum 2006, No. 422.

Cross Reference

Interlocal Cooperation Act, see section 13-801.

Nebraska Budget Act, see section 13-501.

79-4,109 Class I district; reaffiliation authorized; effective date; effect. A Class I district with more than fifty percent of its valuation affiliated with a single Class II or III district participating in a unified system may reaffiliate so that its entire valuation is affiliated with that Class II or III district. A Class I district which is not entirely within a Class VI system and which does not have more than fifty percent of its valuation affiliated with a Class II or III district may reaffiliate so that its entire valuation is affiliated with a Class II or III district participating in a unified system. The effective date of the reaffiliation shall be the effective date of the Class I district's participation in the unified system. The reaffiliation shall not affect any existing bond obligations.

Source: Laws 1998, LB 1219, § 10; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

79-4,110 Class I district; merge, dissolve, or reorganize; limitations. A Class I district of which eight percent or more of the district's valuation is affiliated with a single Class II or III district shall not merge, dissolve, or reorganize unless:

(1) All Class II or III districts with which eight percent or more of the Class I district's valuation is affiliated are also reorganizing in the same reorganization plan, petition, or election and that plan, petition, or election requires approval by either the school boards or legal voters of such Class II or III districts;

(2) The Class I district's valuation is being merged with the Class II or III districts with which the property is affiliated;

(3) The Class I district has been participating in a unified system for a minimum of seven school fiscal years and the unified system includes at least one Class II or III district reorganizing in the same reorganization plan or petition; or

(4) The school boards of all Class II or III districts with which eight percent or more of the Class I district's valuation is affiliated vote to approve the plan or petition.

Source: Laws 1998, LB 1219, § 11; Laws 2002, LB 460, § 1; Laws 2005, LB 126, § 57; Referendum 2006, No. 422.

79-4,111 Unified system; participating and nonparticipating Class I districts; treatment; budget data. The affiliation agreement for a Class I district that is affiliated with a Class II or III district that is participating in a unified system shall continue unmodified unless (1) the Class I district reaffiliates pursuant to section 79-4,109 or (2) the Class I district's entire valuation is included in the unified system and the Class I district chooses to participate in the unified system by becoming a party to the interlocal agreement pursuant to section 79-4,108. For the purpose of determining the total allowable general fund budget of expenditures minus the special education budget of expenditures pursuant to section

79-1083.03 for Class I districts that are not participating in the unified system, the data for the unified system shall be deemed to be the data for the high school district if the primary high school district is a participant in the unified system.

Source: Laws 1998, LB 1219, § 12; Laws 2005, LB 126, § 39; Referendum 2006, No. 422.

(m) REORGANIZATION OF CLASS I AND VI SCHOOL DISTRICTS

79-4,112 Repealed. Referendum 2006, No. 422.

79-4,113 Repealed. Referendum 2006, No. 422.

79-4,114 Repealed. Referendum 2006, No. 422.

79-4,115 Repealed. Referendum 2006, No. 422.

79-4,116 Repealed. Referendum 2006, No. 422.

(n) LEARNING COMMUNITY REORGANIZATION ACT

79-4,117 Act, how cited. Sections 79-4,117 to 79-4,129 shall be known and may be cited as the Learning Community Reorganization Act.

Source: Laws 2006, LB 1024, § 28; Laws 2007, LB641, § 5.
Effective date September 1, 2007.

79-4,125 Disapproved plan; return to council. If the state committee disapproves the plan pursuant to the Learning Community Reorganization Act, it shall be considered a disapproved plan and returned to the learning community coordinating council as a disapproved plan.

Source: Laws 2006, LB 1024, § 36; Laws 2007, LB641, § 6.
Effective date September 1, 2007.

79-4,126 Approved plan; procedure. When a plan of reorganization or any part thereof has been approved by the state committee pursuant to the Learning Community Reorganization Act, it shall be designated as the final approved plan and shall be returned to the learning community coordinating council to be submitted to the school boards of the affected school districts for approval or rejection by such school boards within forty-five days.

Source: Laws 2006, LB 1024, § 37; Laws 2007, LB641, § 7.
Effective date September 1, 2007.

79-4,128 County clerk; duties; filings required. If the plan of reorganization is approved by the state committee and the school board of each affected school district pursuant to the Learning Community Reorganization Act, the county clerk shall proceed to cause the changes, realignment, and adjustment of districts to be carried out as provided in the plan. The county clerk shall classify the school districts according to the plan of reorganization. He or

she shall also file certificates with the county assessor, county treasurer, and state committee showing the boundaries of the various districts under the approved plan of reorganization.

Source: Laws 2006, LB 1024, § 39; Laws 2007, LB641, § 8.
Effective date September 1, 2007.

79-4,130 Repealed. Laws 2007, LB 641, § 54.

ARTICLE 5

SCHOOL BOARDS

(b) SCHOOL BOARD DUTIES

Section.

79-528. Reports; filing requirements; contents.

(d) SCHOOL BOARD MEETINGS AND PROCEDURES

79-556. Class I school district; annual school meeting; time; place; school year.

(b) SCHOOL BOARD DUTIES

79-528 Reports; filing requirements; contents. (1)(a) On or before July 20 in all school districts, the superintendent or head administrator shall file with the State Department of Education a report under oath showing the number of children from five through eighteen years of age belonging to the school district according to the census taken as provided in sections 79-524 and 79-578. The report shall identify the number of boys and the number of girls in each of the respective age categories. On or before July 20, school districts that are members of learning communities shall provide the learning community coordinating council with a copy of the report filed with the department. On or before August 1, each learning community coordinating council shall file with the department a report showing the number of children from five through eighteen years of age belonging to the member school districts according to the school district reports filed with the department.

(b) Each Class I school district which is part of a Class VI school district offering instruction (i) in grades kindergarten through five shall report children from five through ten years of age, (ii) in grades kindergarten through six shall report children from five through eleven years of age, and (iii) in grades kindergarten through eight shall report children from five through thirteen years of age.

(c) Each Class VI school district offering instruction (i) in grades six through twelve shall report children who are eleven through eighteen years of age, (ii) in grades seven through twelve shall report children who are twelve through eighteen years of age, and (iii) in grades nine through twelve children who are fourteen through eighteen years of age.

(d) Each Class I district which has affiliated in whole or in part shall report children from five through thirteen years of age.

(e) Each Class II, III, IV, or V district shall report children who are fourteen through eighteen years of age residing in Class I districts or portions thereof which have affiliated with such district.

(f) The board of any district neglecting to take and report the enumeration shall be liable to the school district for all school money which such district may lose by such neglect.

(2) On or before June 30 the superintendent or head administrator of each school district shall file with the Commissioner of Education a report under oath described as an end-of-the-school-year annual statistical summary showing (a) the number of children attending school during the year under five years of age, (b) the length of time the school has been taught during the year by a qualified teacher, (c) the length of time taught by each substitute teacher, and (d) such other information as the Commissioner of Education directs. On or before June 30, school districts that are members of learning communities shall also provide the learning community coordinating council with a copy of the report filed with the commissioner. On or before July 15, each learning community coordinating council shall file with the commissioner an end-of-the-school year annual statistical summary for the learning community based on the member school districts according to the school district reports filed with the commissioner.

(3)(a) On or before November 1 the superintendent or head administrator of each school district shall submit to the Commissioner of Education, to be filed in his or her office, a report under oath described as the annual financial report showing (i) the amount of money received from all sources during the year and the amount of money expended by the school district during the year, (ii) the amount of bonded indebtedness, (iii) such other information as shall be necessary to fulfill the requirements of the Tax Equity and Educational Opportunities Support Act and section 79-1114, and (iv) such other information as the Commissioner of Education directs.

(b) On or before November 1, school districts that are members of learning communities shall also provide the learning community coordinating council with a copy of the report submitted to the commissioner. On or before November 15, each learning community coordinating council shall submit to the commissioner, to be filed in his or her office, a report described as the annual financial report showing (i) the aggregate amount of money received from all sources during the year for all member school districts and the aggregate amount of money expended by member school districts during the year, (ii) the aggregate amount of bonded indebtedness for all member school districts, (iii) such other aggregate information as shall be necessary to fulfill the requirements of the Tax Equity and Educational Opportunities Support Act and section 79-1114 for all member school districts, and (iv) such other aggregate information as the Commissioner of Education directs for all member school districts.

(4)(a) On or before October 15 of each year, the superintendent or head administrator of each school district shall deliver to the department the fall school district membership report, which report shall include the number of children from birth through twenty years of age enrolled in the district on the last Friday in September of a given school year. The report shall

enumerate (i) students by grade level, (ii) school district levies and total assessed valuation for the current fiscal year, and (iii) such other information as the Commissioner of Education directs.

(b) On or before October 15 of each year, school districts that are members of learning communities shall also provide the learning community coordinating council with a copy of the report delivered to the department. On or before October 31 of each year, each learning community coordinating council shall deliver to the department the fall learning community membership report, which report shall include the aggregate number of children from birth through twenty years of age enrolled in the member school districts on the last Friday in September of a given school year for all member school districts. The report shall enumerate (i) the aggregate students by grade level for all member school districts, (ii) learning community levies and total assessed valuation for the current fiscal year, and (iii) such other information as the Commissioner of Education directs.

(c) When any school district or learning community fails to submit its fall membership report by November 1, the commissioner shall, after notice to the district and an opportunity to be heard, direct that any state aid granted pursuant to the Tax Equity and Educational Opportunities Support Act be withheld until such time as the report is received by the department. In addition, the commissioner shall direct the county treasurer to withhold all school money belonging to the school district or learning community until such time as the commissioner notifies the county treasurer of receipt of such report. The county treasurer shall withhold such money. For school districts that are members of learning communities, a determination of school money belonging to the district shall be based on the proportionate share of state aid and property tax receipts allocated to the school district by the learning community coordinating council, and the treasurer of the learning community coordinating council shall withhold any such school money in the possession of the learning community from the school district. If a school district that is a member of a learning community fails to provide a copy of the report to the learning community coordinating council on or before October 15, the learning community coordinating council shall complete the fall learning community membership report with information from the reports received from other member school districts.

Source: Laws 1881, c. 78, subdivision IV, § 16, p. 350; Laws 1885, c. 79, § 1, p. 323; Laws 1889, c. 78, § 12, p. 547; R.S.1913, § 6779; C.S.1922, § 6320; C.S.1929, § 79-417; R.S.1943, § 79-419; Laws 1949, c. 256, § 90, p. 723; Laws 1959, c. 391, § 1, p. 1346; Laws 1969, c. 706, § 4, p. 2710; Laws 1977, LB 487, § 1; Laws 1978, LB 874, § 1; Laws 1979, LB 187, § 230; Laws 1985, LB 662, § 32; Laws 1989, LB 487, § 3; Laws 1990, LB 1090, § 6; Laws 1990, LB 1059, § 36; Laws 1991, LB 511, § 35; Laws 1992, LB 245, § 40; Laws 1992, LB 1001, § 16; Laws 1994, LB 858, § 6; Laws 1994, LB 1310, § 3; R.S.1943, (1994), § 79-451; Laws 1996, LB 900, § 281; Laws 1997, LB 269, § 59; Laws 1997, LB 806, § 27; Laws 1998, Spec. Sess., LB 1, § 13; Laws 1999, LB 272, § 73; Laws 1999, LB 813, § 11; Laws 2001, LB 797, § 13; Laws 2003, LB 67, § 6; Laws 2003, LB 394, § 6; Laws 2006, LB 1024, § 52; Laws 2007, LB641, § 9.
Effective date September 1, 2007.

Cross Reference

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

(d) SCHOOL BOARD MEETINGS AND PROCEDURES

79-556 Class I school district; annual school meeting; time; place; school year. The annual school meeting of each Class I school district shall be held at the schoolhouse, if there is one, or at some other suitable place within the district on or before the second Monday of August of each year. The officers elected as provided in sections 79-472 and 79-565 shall take possession of the office to which they have been elected at the first meeting of the board following its election, and the school year shall commence with that day.

Source: Laws 1881, c. 78, subdivision II, § 1, p. 338; Laws 1885, c. 79, § 1, p. 322; Laws 1889, c. 78, § 2, p. 542; R.S.1913, § 6730; Laws 1915, c. 115, § 1, p. 265; C.S.1922, § 6268; C.S.1929, § 79-201; R.S.1943, § 79-201; Laws 1949, c. 256, § 185, p. 752; Laws 1969, c. 723, § 1, p. 2753; Laws 1971, LB 292, § 15; Laws 1973, LB 430, § 1; Laws 1976, LB 757, § 1; Laws 1978, LB 874, § 3; R.S.1943, (1994), § 79-501; Laws 1996, LB 900, § 309; Laws 1999, LB 813, § 13; Laws 2005, LB 126, § 41; Referendum 2006, No. 422.

Cross Reference

Fiscal year, see section 79-1091.

ARTICLE 6**SCHOOL TRANSPORTATION**

Section.

79-611. Students; transportation; transportation allowance; when authorized; limitations; board; authorize service.

79-611 Students; transportation; transportation allowance; when authorized; limitations; board; authorize service. (1) The school board of any school district shall either provide free transportation or pay an allowance for transportation in lieu of free transportation as follows:

(a) When a student attends an elementary school in his or her own district and lives more than four miles from the public schoolhouse in such district;

(b) When a student is required to attend an elementary school outside of his or her own district and lives more than four miles from such elementary school;

(c) When a student attends a secondary school in his or her own Class II or Class III school district and lives more than four miles from the public schoolhouse. This subdivision does not apply when one or more Class I school districts merge with a Class VI school district to form a new Class II or III school district on or after January 1, 1997; and

(d) When a student, other than a student in grades ten through twelve in a Class V district, attends an elementary or junior high school in his or her own Class V district and lives more than four miles from the public schoolhouse in such district.

(2)(a) The school board of any school district that is a member of a learning community shall provide free transportation for a student if (i) the student is transferring pursuant to the open enrollment provisions of section 79-2110, qualifies for free or reduced-price lunches,

and lives more than one mile from the school to which he or she transfers, (ii) the student is transferring pursuant to such open enrollment provisions and the student is a student who contributes to the socioeconomic diversity of the school building the student attends, (iii) the student is attending a focus school or program and lives more than one mile from the school building housing the focus school or program, or (iv) the student is attending a magnet school or program and lives more than one mile from the magnet school or the school housing the magnet program.

(b) For purposes of this subsection, a student who contributes to the socioeconomic diversity of the school building he or she attends means (i) a student who is not a student qualifying for free or reduced-price lunches when, based upon official membership, the school building the student will attend has more students qualifying for free or reduced-price lunches than the average percentage of such students in all school buildings in the learning community or (ii) a student who is a student that qualifies for free or reduced-price lunches when, based upon official membership, the school building the student will attend has fewer students qualifying for free or reduced-price lunches than the average percentage of such students in all school buildings in the learning community. This subsection does not prohibit a school district that is a member of a learning community from providing transportation to any intradistrict student.

(3) The transportation allowance which may be paid to the parent, custodial parent, or guardian of students qualifying for free transportation pursuant to subsection (1) or (2) of this section shall equal two hundred eighty-five percent of the mileage rate provided in section 81-1176, multiplied by each mile actually and necessarily traveled, on each day of attendance, beyond which the one-way distance from the residence of the student to the schoolhouse exceeds three miles.

(4) Whenever students from more than one family travel to school in the same vehicle, the transportation allowance prescribed in subsection (3) of this section shall be payable as follows:

(a) To the parent, custodial parent, or guardian providing transportation for students from other families, one hundred percent of the amount prescribed in subsection (3) of this section for the transportation of students of such parent's, custodial parent's, or guardian's own family and an additional five percent for students of each other family not to exceed a maximum of one hundred twenty-five percent of the amount determined pursuant to subsection (3) of this section; and

(b) To the parent, custodial parent, or guardian not providing transportation for students of other families, two hundred eighty-five percent of the mileage rate provided in section 81-1176 multiplied by each mile actually and necessarily traveled, on each day of attendance, from the residence of the student to the pick-up point at which students transfer to the vehicle of a parent, custodial parent, or guardian described in subdivision (a) of this subsection.

(5) The board may authorize school-provided transportation to any student who does not qualify under the mileage requirements of subsection (1) of this section and may charge a fee to the parent or guardian of the student for such service. An affiliated high school district may provide free transportation or pay the allowance described in this section for high school

students residing in an affiliated Class I district. No transportation payments shall be made to a family for mileage not actually traveled by such family. The number of days the student has attended school shall be reported monthly by the teacher to the board of such public school district.

(6) No more than one allowance shall be made to a family irrespective of the number of students in a family being transported to school. If a family resides in a Class I district which is part of a Class VI district and has students enrolled in any of the grades offered by the Class I district and in any of the non-high-school grades offered by the Class VI district, such family shall receive not more than one allowance for the distance actually traveled when both districts are on the same direct travel route with one district being located a greater distance from the residence than the other. In such cases, the travel allowance shall be prorated among the school districts involved.

(7) No student shall be exempt from school attendance on account of distance from the public schoolhouse.

Source: Laws 1927, c. 84, § 1, p. 251; Laws 1929, c. 92, § 1, p. 348; C.S.1929, § 79-1902; Laws 1931, c. 149, § 1, p. 405; Laws 1941, c. 163, § 1, p. 650; C.S.Supp.,1941, § 79-1902; R.S.1943, § 79-1907; Laws 1949, c. 256, § 128, p. 735; Laws 1951, c. 276, § 6, p. 930; Laws 1955, c. 315, § 9, p. 979; Laws 1963, c. 483, § 1, p. 1553; Laws 1969, c. 717, § 1, p. 2743; Laws 1969, c. 718, § 1, p. 2744; Laws 1969, c. 719, § 1, p. 2746; Laws 1976, LB 852, § 1; Laws 1977, LB 117, § 1; Laws 1977, LB 33, § 10; Laws 1979, LB 425, § 1; Laws 1980, LB 867, § 2; Laws 1981, LB 204, § 156; Laws 1981, LB 316, § 3; Laws 1986, LB 419, § 1; Laws 1987, LB 200, § 1; Laws 1990, LB 259, § 22; Laws 1990, LB 1059, § 38; Laws 1993, LB 348, § 21; Laws 1994, LB 1311, §1; R.S.1943, (1994), § 79-490; Laws 1996, LB 900, § 372; Laws 1997, LB 710, § 4; Laws 1997, LB 806, § 28; Laws 1999, LB 272, § 84; Laws 2003, LB 394, § 7; Laws 2005, LB 126, § 42; Laws 2006, LB 1024, § 56; Referendum 2006, No. 422; Laws 2007, LB641, § 10.
Effective date September 1, 2007.

Cross Reference

For definitions relating to affiliation of school districts, see section 79-4.101.

Public Elementary and Secondary Student Fee Authorization Act, see section 79-2.125.

ARTICLE 7

ACCREDITATION, CURRICULUM, AND INSTRUCTION

(i) QUALITY EDUCATION ACCOUNTABILITY ACT

Section.

79-757. Act, how cited.

79-758. Terms, defined.

79-760. Statewide assessment and reporting system for school years prior to 2009-10; State Board of Education; duties.

79-760.01. Academic content standards; State Board of Education; duties.

79-760.02. Academic content standards; school districts, educational service units, and learning communities; duties.

79-760.03. Statewide assessment and reporting system for school year 2009-10 and subsequent years; State Board of Education; duties.

79-760.04. Learning community; joint plan; contents; report of data by school districts.

79-760.05. Statewide system for tracking individual student achievement; State Board of Education; duties; school districts; provide data; analysis and reports.

(k) LEARNING COMMUNITY FOCUS SCHOOL OR PROGRAM

79-769. Focus school or program; magnet programs; authorized; requirements.

(i) QUALITY EDUCATION ACCOUNTABILITY ACT

79-757 Act, how cited. Sections 79-757 to 79-762 shall be known and may be cited as the Quality Education Accountability Act.

Source: Laws 1998, LB 1228, § 1; Laws 2000, LB 812, § 1; Laws 2007, LB653, § 1.
Effective date September 1, 2007.

79-758 Terms, defined. For purposes of the Quality Education Accountability Act:

(1) Assessment means the process of measuring student achievement and progress on state and locally adopted standards;

(2) Assessment instrument means a test aligned with state and local standards that is designed to measure student progress and achievement;

(3) Assessment portfolio means the compilation of assessment practices and procedures, assessment instruments, and national assessment instruments used by a school district in meeting assessment and reporting requirements; and

(4) National assessment instrument means a nationally norm-referenced test developed and scored by a national testing service.

Source: Laws 2007, LB653, § 2.
Effective date September 1, 2007.

79-760 Statewide assessment and reporting system for school years prior to 2009-10; State Board of Education; duties. (1)(a) For school years prior to 2009-10, the State Board of Education shall implement a statewide system for the assessment of student learning and for reporting the performance of school districts and learning communities pursuant to this section. The assessment and reporting system shall test student knowledge of subject matter materials covered by the measurable model academic content standards approved by the state board. The state board shall adopt an assessment and reporting plan and begin implementation of the assessment and reporting system in the 2000-01 school year beginning with the assessment of reading and writing. The state board shall prescribe statewide assessments of writing that rely on writing samples beginning in the spring of 2001 with students in each of three grades selected by the state board. For each academic year thereafter, one of the three selected grades shall participate in the statewide writing assessment. The state board shall develop an assessment system and prescribe statewide assessments for the subject areas of reading, mathematics, science, social studies, and history. The assessment and reporting system for each subject area, except writing, shall be based on locally developed assessments the first year.

(b) Following the first assessment in each subject area, except writing, the State Department of Education shall contract with independent, recognized assessment experts to review and

rate locally developed assessments. The department shall identify the criteria for rating the model assessments. The assessment experts shall identify not more than four model assessments receiving the highest ratings. Districts shall thereafter adopt one of the four model assessments and may, in addition, adapt their locally developed assessments.

(c) The aggregate results of any assessments required by the state board pursuant to this section shall be reported by the district on a building basis to the public in that district, to the learning community coordinating council if such district is a member of a learning community, and to the department. Each learning community shall also report the aggregate results of any assessments required by the state board pursuant to this section to the public in that learning community and to the department.

(d) The department shall report the aggregate results of any assessments required by the state board pursuant to this section on a learning community, district, and building basis as part of the statewide assessment and reporting system.

(2) The purposes of the assessment and reporting system described in subsection (1) of this section are to:

(a) Determine how well public schools are performing in terms of achievement of public school students related to the model state academic content standards;

(b) Report the performance of public schools based upon the results of the assessment;

(c) Provide information for the public and policymakers on the performance of public schools; and

(d) Provide for the comparison among Nebraska public schools and the comparison of Nebraska public schools to public schools in the nation and the world.

(3)(a) The assessment and reporting plan described in subsection (1) of this section shall:

(i) Provide for the confidentiality of the results of individual students; and

(ii) Include all public schools and all public school students.

(b) The state board shall adopt criteria for the inclusion of students with disabilities, students entering the school for the first time, and students with limited English proficiency.

Source: Laws 1998, LB 1228, § 4; Laws 2000, LB 812, § 4; Laws 2006, LB 1024, § 58; Laws 2007, LB653, § 3.
Effective date September 1, 2007.

79-760.01 Academic content standards; State Board of Education; duties. The State Board of Education shall adopt measurable model academic content standards for at least three grade levels. The standards shall cover the subject areas of reading, writing, mathematics, science, and social studies. The standards adopted shall be sufficiently clear and measurable to be used for testing student performance with respect to mastery of the content described in the state standards. The State Board of Education shall develop a plan to review and update standards for each subject area every five years. The state board shall review and update the standards in reading by July 1, 2009, the standards in mathematics by July 1, 2010, and the standards in all other subject areas by July 1, 2013. The state board plan shall include a review of commonly accepted standards adopted by school districts.

Source: Laws 2000, LB 812, § 2; Laws 2007, LB653, § 5.
Effective date September 1, 2007.

79-760.02 Academic content standards; school districts, educational service units, and learning communities; duties. In accordance with timelines that are adopted by the State Board of Education, but in no event later than one year following the adoption or modification of state standards, each school district shall adopt measurable quality academic content standards in the subject areas of reading, writing, mathematics, science, and social studies. The standards may be the same as, or may be equal to or exceed in rigor, the measurable model academic content standards adopted by the state board and shall cover at least the same grade levels. School districts may work collaboratively with educational service units, with learning communities, or through interlocal agreements to develop such standards. Educational service units and learning communities shall develop a composite set of standards shared by member school districts. The State Department of Education shall adopt and promulgate appropriate rules and regulations to insure the rigor of the measurable quality academic content standards.

Source: Laws 2000, LB 812, § 3; Laws 2007, LB653, § 6.
Effective date September 1, 2007.

79-760.03 Statewide assessment and reporting system for school year 2009-10 and subsequent years; State Board of Education; duties. (1) For school year 2009-10 and each school year thereafter, the State Board of Education shall implement a statewide system for the assessment of student learning and for reporting the performance of school districts and learning communities pursuant to this section. The assessment and reporting system shall measure student knowledge of subject matter materials covered by measurable academic content standards selected by the state board.

(2) The state board shall adopt a plan for an assessment and reporting system and implement and maintain the assessment and reporting system. The state board shall select three grade levels for assessment and reporting. The purposes of the system are to:

(a) Determine how well public schools are performing in terms of achievement of public school students related to the state academic content standards;

(b) Report the performance of public schools based upon the results of state assessment instruments and national assessment instruments;

(c) Provide information for the public and policymakers on the performance of public schools; and

(d) Provide for the comparison among Nebraska public schools and the comparison of Nebraska public schools to public schools elsewhere.

(3) The state board shall prescribe a statewide assessment of writing that relies on writing samples in each of three grades selected by the state board. Each year at least one of the three selected grades shall participate in the statewide writing assessment with each selected grade level participating at least once every three years.

(4) For school year 2009-10 and for each school year thereafter, the state board shall prescribe a statewide assessment of reading that is based on model assessments developed pursuant to section 79-760. The reading assessment instruments shall be developed in collaboration with educational service units and be approved by a majority of the educational service unit administrators. The statewide assessment of reading shall include assessment instruments for each of the grade levels and standards selected by the state board.

(5) For school year 2010-11 and for each school year thereafter, the state board shall prescribe a statewide assessment of mathematics that is based on model assessments developed pursuant to section 79-760. The mathematics assessment instruments shall be developed in collaboration with educational service units and be approved by a majority of the educational service unit administrators. The statewide assessment of mathematics shall include assessment instruments for each of the grade levels and standards selected by the state board.

(6) School districts shall develop assessment portfolios. Such assessment portfolios may be developed through school district collaboration with educational service units and learning communities or through interlocal agreements. Educational service units shall conduct a peer review of local district assessments annually. Educational service units shall submit documentation of the district portfolios for review by the State Department of Education not more than once every three years. Assessment portfolios shall include all assessment instruments required by the state board and by the Quality Education Accountability Act.

(7) The department shall identify criteria for rating assessment instruments and assessment portfolios. The department shall establish statewide minimum proficiency levels for local assessments and shall include proficiency levels in the rating of assessment instruments and assessment portfolios. The department shall contract with independent, recognized assessment experts to review and rate locally developed assessment instruments and portfolios according to such criteria and proficiency levels.

(8) The department shall conduct studies to verify the technical quality of assessment instruments and demonstrate the comparability of assessment instrument results required by the Quality Education Accountability Act. The department shall annually report such findings to the Governor, the Legislature, and the State Board of Education.

(9) The State Board of Education shall recommend national assessment instruments for the purpose of national comparison. Each school district shall include national assessment instruments in its assessment portfolio.

(10) The aggregate results of assessment instruments and national assessment instruments shall be reported by the district on a building basis to the public in that district, to the learning community coordinating council if such district is a member of a learning community, and to the department. Each learning community shall also report the aggregate results of any assessment instruments and national assessment instruments to the public in that learning community and to the department. The department shall report the aggregate results of

any assessment instruments and national assessment instruments on a learning community, district, and building basis as part of the statewide assessment and reporting system.

(11)(a) The assessment and reporting plan shall:

- (i) Provide for the confidentiality of the results of individual students; and
- (ii) Include all public schools and all public school students.

(b) The state board shall adopt criteria for the inclusion of students with disabilities, students entering the school for the first time, and students with limited English proficiency.

Source: Laws 2007, LB653, § 4.
Effective date September 1, 2007.

79-760.04 Learning community; joint plan; contents; report of data by school districts. (1) For each learning community, any educational service units that have member school districts that are part of such learning community shall develop and implement a joint plan to establish grade level standards and provide for developmentally appropriate assessment of students in grades kindergarten through three. The joint plan shall include, but not be limited to, the subject areas of reading and mathematics and shall be developed to measure student progress toward such standards.

(2) The coordinator appointed pursuant to section 79-11,150 and the State Department of Education shall provide assistance in the development of the standards and assessment described in subsection (1) of this section.

(3) School districts shall report data collected pursuant to the plan described in subsection (1) of this section to such educational service units. The data shall conform with the data collection procedures established for the student identifier system pursuant to section 79-760.05.

Source: Laws 2007, LB653, § 7.
Effective date September 1, 2007.

79-760.05 Statewide system for tracking individual student achievement; State Board of Education; duties; school districts; provide data; analysis and reports. (1) The State Board of Education shall implement a statewide system for tracking individual student achievement, using the student identifier system of the State Department of Education, that can be aggregated to track student progress by demographic characteristics, including, but not limited to, race, poverty, high mobility, attendance, and limited English proficiency, on available measures of student achievement which include, but need not be limited to, national assessment instruments, state assessment instruments, local assessment instruments, and other similar measures. Such a system shall be designed so as to aggregate student data by available educational input characteristics, which may include class size, teacher education, teacher experience, special education, early childhood programs, federal programs, and other targeted education programs. School districts shall provide the department with individual student achievement data as requested in order to implement the statewide system.

(2) The department and the coordinator appointed pursuant to section 79-11,150 shall annually analyze and report on student achievement for the state, each school district, and each

learning community aggregated by the demographic characteristics described in subsection (1) of this section. The department shall report the findings to the Governor, the Legislature, school districts, educational service units, and each learning community. Such analysis shall include aggregated data that would indicate differences in achievement due to available educational input characteristics described in subsection (1) of this section. Such analysis shall include indicators of progress toward state achievement goals for students in poverty, limited English proficient students, and highly mobile students according to the plan developed by the coordinator pursuant to section 79-11,150.

Source: Laws 2007, LB653, § 8.
Effective date September 1, 2007.

(k) LEARNING COMMUNITY FOCUS SCHOOL OR PROGRAM

79-769 Focus school or program; magnet programs; authorized; requirements. (1) Any one or more member school districts of a learning community may establish a focus school or program pursuant to the diversity plan developed by the learning community coordinating council.

(2) Member school districts of a learning community may also establish magnet programs which may include magnet pathways across member school districts pursuant to the diversity plan developed by the learning community coordinating council.

(3) For purposes of this section:

(a) Focus program means a program that does not have an attendance area and is unique and designed differently than the standard curriculum which may be housed in an existing school building;

(b) Focus school means a school that does not have an attendance area and whose enrollment is designed so that the socioeconomic diversity of the students attending the focus school reflects as nearly as possible the socioeconomic diversity of the student body of the learning community;

(c) Magnet pathway means a location in which elementary, middle, and high school magnet schools are placed;

(d) Magnet program means a program which offers coordinated elementary, middle, and high school programs and services that are unique and that have specific learning goals in addition to the standard curriculum; and

(e) Magnet school means a school having a home attendance area but which reserves a portion of its capacity specifically for students from outside the attendance area who will contribute to the socioeconomic diversity of the student body of such school.

Source: Laws 2006, LB 1024, § 57; Laws 2007, LB641, § 11.
Effective date September 1, 2007.

ARTICLE 8

TEACHERS AND ADMINISTRATORS

(a) CERTIFICATES

Section.

- 79-809. Teachers' entry-level certificates or permits; qualifications.
- 79-810. Certificates or permits; issuance by Commissioner of Education; fee; disposition; contents of certificate or permit; endorsements; Certification Fund; Professional Practices Commission Fund; created; use; investment.

(c) TENURE

- 79-843. Teachers and school nurses; contract; renewal; exceptions; amend or terminate; notice; hearings; decision.

(e) UNIFIED SYSTEM OR REORGANIZED SCHOOL DISTRICTS

- 79-850. Terms, defined.
- 79-857. Allocation of certificated employees; procedure.

(a) CERTIFICATES

79-809 Teachers' entry-level certificates or permits; qualifications. In addition to the requirements in section 79-808, the maximum which the board may require for the issuance of any entry-level certificate or permit shall be that the applicant (1) has a baccalaureate degree that qualifies for a certificate to teach, (2) has satisfactorily completed, within two years of the date of application, an approved program at a standard institution of higher education, (3) has satisfactorily demonstrated basic skills competency, (4) has special education training, (5) has earned college credit in an approved program, at a standard institution of higher education, for which endorsement is sought, and (6) has paid a nonrefundable fee to the department as provided in section 79-810.

Source: Laws 1963, c. 491, § 4, p. 1570; Laws 1976, LB 833, § 1; Laws 1984, LB 994, § 10; Laws 1985, LB 633, § 8; Laws 1990, LB 1090, § 21; Laws 1994, LB 1310, § 10; Laws 1996, LB 754, § 8; R.S.1943, (1994), § 79-1247.06; Laws 1996, LB 900, § 439; Laws 2001, LB 314, § 2; Laws 2003, LB 685, § 9; Laws 2007, LB150, § 1.
Effective date September 1, 2007.

79-810 Certificates or permits; issuance by Commissioner of Education; fee; disposition; contents of certificate or permit; endorsements; Certification Fund; Professional Practices Commission Fund; created; use; investment. (1) Certificates and permits shall be issued by the commissioner upon application on forms prescribed and provided by him or her which shall include the applicant's social security number.

(2) Each certificate or permit issued by the commissioner shall indicate the area of authorization to teach, provide special services, or administer and any areas of endorsement for which the holder qualifies. During the term of any certificate or permit issued by the commissioner, additional endorsements may be made on the certificate or permit if the holder submits an application, meets the requirements for issuance of the additional endorsements, and pays a nonrefundable fee of forty dollars.

(3) The Certification Fund is created. Any fee received by the department under sections 79-806 to 79-815 shall be remitted to the State Treasurer for credit to the fund. The fund shall be used by the department in paying the costs of certifying educators pursuant to such sections and to carry out subsection (3) of section 79-808. For issuance of a certificate or permit valid in all schools, the nonrefundable fee shall be fifty-five dollars, except that thirteen dollars of the fifty-five-dollar fee shall be credited to the Professional Practices Commission Fund which is created for use by the department to pay for the provisions of sections 79-859 to 79-871. For issuance of a certificate or permit valid only in nonpublic schools, the nonrefundable fee shall be forty dollars. Any money in the Certification Fund or the Professional Practices Commission Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1963, c. 491, § 5, p. 1571; Laws 1967, c. 549, § 8, p. 1814; Laws 1969, c. 728, § 1, p. 2763; Laws 1969, c. 729, § 1, p. 2764; Laws 1969, c. 584, § 79, p. 2393; Laws 1977, LB 540, § 1; Laws 1980, LB 771, § 1; Laws 1991, LB 855, § 1; Laws 1991, LB 511, § 58; Laws 1992, LB 245, § 63; Laws 1993, LB 348, § 29; Laws 1994, LB 1066, § 89; R.S.1943, (1994), § 79-1247.07; Laws 1996, LB 900, § 440; Laws 1997, LB 206, § 1; Laws 1997, LB 752, § 216; Laws 2002, Second Spec. Sess., LB 1, § 5; Laws 2003, LB 685, § 10; Laws 2007, LB 150, § 2.
Effective date September 1, 2007.

Cross Reference

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

(c) TENURE

79-843 Teachers and school nurses; contract; renewal; exceptions; amend or terminate; notice; hearings; decision. The contracts of the teaching staff and school nurses employed by an educational program administered by the State Department of Education, the Department of Health and Human Services, or a political subdivision of the state, except a school district or an educational service unit, the colleges governed by the Board of Trustees of the Nebraska State Colleges, and any university governed by the Board of Regents of the University of Nebraska shall require the sanction of a majority of the members of the governing board. Except as provided in section 79-845, each such contract shall be deemed renewed and in force and effect until a majority of the governing board votes or the Department of Health and Human Services determines, sixty days before the close of the contract period, to amend or terminate the contract for just cause. The department or the secretary of the governing board shall notify each teacher or school nurse in writing at least ninety days before the close of the contract period of any conditions of unsatisfactory performance or a reduction in teaching staff or nursing staff that the department or board considers may be just cause to either amend or terminate the contract for the ensuing year. Any teacher or school nurse so notified shall have the right to file, within five days after receipt of such notice, a written request with the department or board for a hearing before the department or board. Upon receipt of such request, the department or board shall order

the hearing to be held within ten days after such receipt and shall give written notice of the time and place of the hearing to the teacher or school nurse. At the hearing, evidence shall be presented in support of the reasons given for considering amendment or termination of the contract and the teacher or school nurse shall be permitted to produce evidence related thereto. The department or board shall render the decision to amend or terminate a contract based on the evidence produced at the hearing.

Source: Laws 1973, LB 422, § 1; Laws 1975, LB 82, § 2; Laws 1975, LB 493, § 2; Laws 1977, LB 368, § 1; Laws 1978, LB 908, § 1; Laws 1980, LB 442, § 1; Laws 1982, LB 259, § 16; Laws 1991, LB 663, § 42; Laws 1991, LB 511, § 59; Laws 1992, LB 245, § 64; Laws 1993, LB 239, § 3; R.S.1943, (1994), § 79-1254.02; Laws 1996, LB 900, § 473; Laws 1996, LB 1044, § 818; Laws 2007, LB296, § 712. Operative date July 1, 2007.

(e) UNIFIED SYSTEM OR REORGANIZED SCHOOL DISTRICTS

79-850 Terms, defined. For purposes of sections 79-850 to 79-858:

(1) Reorganized school district means: (a) Any expanded or altered school district, organized or altered by any of the means provided by Nebraska law including, but not limited to, the methods provided by the Reorganization of School Districts Act, the Learning Community Reorganization Act, section 79-407, 79-413, or 79-473, or sections 79-415 to 79-417 or 79-452 to 79-455; or (b) any school district to be formed in the future if the petition or plan for such reorganized school district has been approved pursuant to any of the methods set forth in subdivision (1)(a) of this section when the effective date of such reorganization is prospective. For purposes of this subdivision, a petition or plan shall be deemed approved when the last legal action has been taken, as prescribed in section 79-413, 79-450, or 79-455, necessary to effect the changes in boundaries as set forth in the petition or plan; and

(2) Unified system means a unified system as defined in section 79-4,108 recognized by the State Department of Education pursuant to subsection (3) of such section, which employs certificated staff.

Source: Laws 1980, LB 844, § 1; Laws 1985, LB 662, § 36; Laws 1988, LB 520, § 5; R.S.1943, (1994), § 79-12,104; Laws 1996, LB 900, § 480; Laws 1997, LB 347, § 25; Laws 1998, LB 1219, § 1; Laws 1999, LB 272, § 90; Laws 2005, LB 126, § 43; Laws 2006, LB 1024, § 59; Referendum 2006, No. 422.

Cross Reference

Class V School Employees Retirement Act, see section 79-978.01.

Learning Community Reorganization Act, see section 79-4,117.

Reorganization of School Districts Act, see section 79-432.

79-857 Allocation of certificated employees; procedure. (1) For reorganizations involving consolidation of school districts into one or more reorganized districts, staff not electing retirement pursuant to section 79-855 or Staff Development Assistance pursuant to section 79-856 shall be allocated prior to the effective date of reorganization as follows:

(a) All districts involved may enter into an agreement on the allocation of all certificated employees to one or more of the reorganized districts. No certificated employee shall be allocated to more than one district. Such agreement shall be signed by all the districts involved;

(b) All certificated employees from the district or districts who have not been allocated pursuant to subdivision (1)(a) of this section shall be totaled and allocated among the reorganized districts based upon the proportion of students transferring to the reorganized district;

(c) All certificated employees from the district shall be treated equally in the allocation regardless of seniority. Staff shall not be given the option to choose the reorganized district in which to relocate. Random selection shall be utilized to allocate individual employees among all reorganized districts; and

(d) Once the selection and allocation is completed, employees from the district or districts shall retain years of service from the previous district for purposes of seniority. Within each reorganized district, employees from the receiving district shall not have priority over transferring employees. All reduction-in-force laws and policies shall apply.

(2) For unifications, staff not electing retirement pursuant to section 79-855 or Staff Development Assistance pursuant to section 79-856 shall be allocated prior to the effective date of the unification in compliance with an agreement signed by all participating districts. Once the selection and allocation is completed, employees shall retain years of service from the participating district for purposes of seniority. All reduction-in-force laws and policies shall apply.

Source: Laws 1996, LB 1050, § 36; Laws 1998, LB 1219, § 7; Laws 2005, LB 126, § 44; Referendum 2006, No. 422.

Cross Reference

Reduction-in-force policy, see sections 79-846 to 79-849.

ARTICLE 9

SCHOOL EMPLOYEES RETIREMENT SYSTEMS

(a) EMPLOYEES OF OTHER THAN CLASS V DISTRICT

Section.

79-947.01. Benefits; adjustment.

79-956. Death of member before retirement; contributions; how treated.

79-958. Employee; employer; required deposits and contributions.

(b) EMPLOYEES RETIREMENT SYSTEM IN CLASS V DISTRICTS

79-9,113. Employees retirement system; federal Social Security Act; state retirement plan; how affected; required contributions; payment; membership service annuity; computations.

(a) EMPLOYEES OF OTHER THAN CLASS V DISTRICT

79-947.01 Benefits; adjustment. (1) Beginning July 1, 2000, and each July 1 thereafter, current benefits paid to a member or beneficiary shall be adjusted so that the purchasing power of the benefit being paid is not less than seventy-five percent of the

purchasing power of the initial benefit. The amount of the adjustment shall be equal to the difference in the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers during the benefit payment period and one hundred thirty-three and one-third percent, such percentage times the initial benefit, less the total of all previous supplemental benefit and cost-of-living adjustments granted. The adjustment pursuant to this subsection shall not cause a current benefit to be reduced.

(2)(a) Beginning July 1, 2000, and until July 1, 2001, the current benefit of a member or the beneficiary of such a member shall be increased annually by the lesser of (i) the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics of the United States Department of Labor for the prior year or (ii) two percent.

(b) Beginning July 1, 2001, the current benefit to a member or the beneficiary of such a member shall be increased annually by the lesser of (i) the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics of the United States Department of Labor for the prior year or (ii) two and one-half percent.

(3) The state shall contribute to the Annuity Reserve Fund an annual level dollar payment certified by the board. For the 1996-97 fiscal year through the 2010-11 fiscal year, the annual level dollar payment certified by the board shall equal 81.7873 percent of six million eight hundred ninety-five thousand dollars.

(4) The retirement board shall adjust the annual benefit adjustment provided in this section so that the total amount of all cost-of-living adjustments provided to the eligible retiree at the time of the annual benefit adjustment does not exceed the change in the National Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics for the period between June 30 of the prior year to June 30 of the present year. If the consumer price index used in this section is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost of living for retired employees.

(5) In addition to the adjustments provided in subsections (1), (2), and (4) of this section, the current benefit to a member or beneficiary of such member, and for which the first payment was dated on or before June 30, 2007, shall be subject to adjustment of the greater of (a) the annuity payable to the member or beneficiary as adjusted, if applicable, under the provisions of subsection (1), (2), or (4) of this section or (b) eighty-five percent of the annuity which results when the original annuity that was paid to the member or beneficiary, before any cost-of-living adjustments under this section, is adjusted by the increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between the commencement date of the annuity and June 30, 2007.

Source: Laws 1996, LB 700, § 7; Laws 1999, LB 674, § 5; Laws 2001, LB 711, § 3; Laws 2004, LB 1097, § 27; Laws 2007, LB596, § 1.
Effective date May 17, 2007.

79-956 Death of member before retirement; contributions; how treated. (1) If a member dies before retirement, his or her accumulated contributions shall be paid to his or

her estate, to an alternate payee pursuant to a qualified domestic relations order as provided in section 42-1107, or to the person he or she has nominated by designation duly executed and filed with the retirement board. Except for payment to an alternative payee pursuant to a qualified domestic relations order, if no legal representative or beneficiary applies for such accumulated contributions within five years following the date of the deceased member's death, the contributions shall be distributed in accordance with the Uniform Disposition of Unclaimed Property Act.

(2) When the deceased member has not less than twenty years of creditable service regardless of age or dies on or after his or her sixty-fifth birthday and leaves a surviving spouse who has been designated as beneficiary and who, as of the date of the member's death, is the sole surviving primary beneficiary, such beneficiary may elect, within twelve months after the death of the member, to receive an annuity which shall be equal to the amount that would have accrued to the member had he or she elected to have the retirement annuity paid as a one-hundred-percent joint and survivor annuity payable as long as either the member or the member's spouse should survive and had the member retired (a) on the date of death if his or her age at death is sixty-five years or more or (b) at age sixty-five years if his or her age at death is less than sixty-five years.

(3) When the deceased member who was a school employee on or after May 1, 2001, has not less than five years of creditable service and less than twenty years of creditable service and dies before his or her sixty-fifth birthday and leaves a surviving spouse who has been designated in writing as beneficiary and who, as of the date of the member's death, is the sole surviving primary beneficiary, such beneficiary may elect, within twelve months after the death of the member, to receive (a) a refund of the member's contribution account balance with interest plus an additional one hundred one percent of the member's contribution account balance with interest or (b) an annuity payable monthly for the surviving spouse's lifetime which shall be equal to the benefit amount that had accrued to the member at the date of the member's death, commencing when the member would have reached age sixty, or the member's age at death if greater, reduced by three percent for each year payments commence before the member would have reached age sixty-five, and adjusted for payment in the form of a one-hundred-percent joint and survivor annuity.

(4) If the requirements of subsection (2) or (3) of this section are not met, then the beneficiary or the estate, if the member has not filed a statement with the board naming a beneficiary, shall be paid a lump sum equal to all contributions to the fund made by such member plus regular interest, except that commencing on January 1, 2006, an application for benefits under subsection (2) or (3) of this section shall be deemed to have been timely filed if the application is received by the retirement system within twelve months after the date of the death of the member.

(5) Benefits to which a surviving spouse, beneficiary, or estate of a member shall be entitled pursuant to this section shall commence immediately upon the death of such member.

Source: Laws 1945, c. 219, § 29, p. 648; R.S.Supp., 1947, § 79-2929; Laws 1949, c. 256, § 462, p. 850; Laws 1951, c. 293, § 3, p. 972; Laws 1969, c. 735, § 8, p. 2781; Laws 1975, LB 50, § 5; Laws 1976, LB 645, § 1; Laws 1981, LB 128, § 1; Laws 1986, LB 325, § 9; Laws 1987, LB 549, § 10; Laws 1988, LB 1170, § 5; Laws 1990, LB 903, § 1; Laws 1994, LB 833, § 32; R.S. 1943, (1994), § 79-1528; Laws 1996, LB 900, § 591; Laws 1996, LB 1273, § 25; Laws 2000, LB 1192, § 16; Laws 2001, LB 711, § 4; Laws 2003, LB 451, § 20; Laws 2007, LB 508, § 2.
Effective date May 17, 2007.

Cross Reference

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

79-958 Employee; employer; required deposits and contributions. (1) Beginning on September 1, 2006, and ending August 31, 2007, for the purpose of providing the funds to pay for formula annuities, every employee shall be required to deposit in the School Retirement Fund seven and eighty-three hundredths percent of compensation. Beginning on September 1, 2007, for the purpose of providing the funds to pay for formula annuities, every employee shall be required to deposit in the School Retirement Fund seven and twenty-eight hundredths percent of compensation. Such deposits shall be transmitted at the same time and in the same manner as required employer contributions.

(2) For the purpose of providing the funds to pay for formula annuities, every employer shall be required to deposit in the School Retirement Fund one hundred one percent of the required contributions of the school employees of each employer. Such deposits shall be transmitted to the retirement board at the same time and in the same manner as such required employee contributions.

(3) The employer shall pick up the member contributions 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 as defined in section 49-801.01, except that the employer 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 code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The employer shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The employer shall pick up these contributions by a compensation deduction through a reduction in the cash compensation of the member. Member contributions picked up shall be treated for all purposes of the School Employees Retirement Act in the same manner and to the same extent as member contributions made prior to the date picked up.

(4) The employer shall pick up the member contributions made through irrevocable payroll deduction authorizations pursuant to sections 79-921, 79-933.03 to 79-933.06, and 79-933.08, and the contributions so picked up shall be treated as employer contributions in the same manner as contributions picked up under subsection (3) of this section.

Source: Laws 1945, c. 219, § 32, p. 649; R.S.Supp.,1947, § 79-2932; Laws 1949, c. 256, § 465, p. 851; Laws 1951, c. 291, § 6, p. 968; Laws 1959, c. 414, § 2, p. 1388; Laws 1967, c. 546, § 9, p. 1806; Laws 1971, LB 987, § 24; Laws 1984, LB 457, § 3; Laws 1985, LB 353, § 3; Laws 1986, LB 325, § 11; Laws 1988, LB 160, § 4; Laws 1988, LB 1170, § 6; Laws 1991, LB 549, § 39; Laws 1994, LB 833, § 33; Laws 1995, LB 574, § 80; Laws 1996, LB 700, § 10; R.S.Supp.,1995, § 79-1531; Laws 1996, LB 900, § 593; Laws 1997, LB 623, § 27; Laws 1998, LB 1191, § 57; Laws 2001, LB 408, § 17; Laws 2002, LB 407, § 35; Laws 2005, LB 503, § 10; Laws 2007, LB596, § 2.
Effective date May 17, 2007.

(b) EMPLOYEES RETIREMENT SYSTEM IN CLASS V DISTRICTS

79-9,113 Employees retirement system; federal Social Security Act; state retirement plan; how affected; required contributions; payment; membership service annuity; computations. (1) If, at any future time, a majority of the eligible members of the retirement system votes to be included under an agreement providing old age and survivors insurance under the Social Security Act of the United States, the contributions to be made by the member and the school district for membership service, from and after the effective date of the agreement with respect to services performed subsequent to December 31, 1954, shall each be reduced from five to three percent but not less than three percent of the member's salary per annum, and the credits for membership service under this system, as provided in section 79-999, shall thereafter be reduced from one and one-half percent to nine-tenths of one percent and not less than nine-tenths of one percent of salary or wage earned by the member during each fiscal year, and from one and sixty-five hundredths percent to one percent and not less than one percent of salary or wage earned by the member during each fiscal year and from two percent to one and two-tenths percent of salary or wage earned by the member during each fiscal year, and from two and four-tenths percent to one and forty-four hundredths percent of salary or wage earned by the member during each fiscal year, except that after September 1, 1963, and prior to September 1, 1969, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and three-fourths percent of salary covered by old age and survivors insurance, and five percent above that amount. Commencing September 1, 1969, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and three-fourths percent of the first seven thousand eight hundred dollars of salary or wages earned each fiscal year and five percent of salary or wages earned above that amount in the same fiscal year. Commencing September 1, 1976, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and nine-tenths percent of the first seven thousand eight hundred dollars of salary or wages earned each fiscal year and five and twenty-five hundredths percent of salary or wages earned above that amount in the same fiscal year. Commencing on September 1, 1982, all employees of the school district shall contribute an amount equal to the membership contribution which shall be four and nine-tenths percent of the compensation earned in each fiscal year. Commencing September 1, 1989, all employees of the school district shall contribute an amount equal to the membership contribution which shall be five and eight-tenths percent of the compensation

earned in each fiscal year. Commencing September 1, 1995, all employees of the school district shall contribute an amount equal to the membership contribution which shall be six and three-tenths percent of the compensation earned in each fiscal year. Commencing September 1, 2007, all employees of the school district shall contribute an amount equal to the membership contribution which shall be seven and three-tenths percent of the compensation paid in each fiscal year. The contributions by the school district in any fiscal year beginning on or after September 1, 1999, shall be the greater of (a) one hundred percent of the contributions by the employees for such fiscal year or (b) such amount as may be necessary to maintain the solvency of the system, as determined annually by the board upon recommendation of the actuary and the trustees. The contributions by the school district in any fiscal year beginning on or after September 1, 2007, shall be the greater of (i) one hundred and one percent of the contributions by the employees for such fiscal year or (ii) such amount as may be necessary to maintain the solvency of the system, as determined annually by the board upon recommendation of the actuary and the trustees. The employee's contribution shall be made in the form of a monthly deduction from compensation as provided in subsection (2) of this section. Every employee who is a member of the system shall be deemed to consent and agree to such deductions and shall receipt in full for compensation, and payment to such employee of compensation less such deduction shall constitute a full and complete discharge of all claims and demands whatsoever for services rendered by such employee during the period covered by such payment except as to benefits provided under the Class V School Employees Retirement Act. After September 1, 1963, and prior to September 1, 1969, all employees shall be credited with a membership service annuity which shall be nine-tenths of one percent of salary or wage covered by old age and survivors insurance and one and one-half percent of salary or wages above that amount, except that those employees who retire on or after August 31, 1969, shall be credited with a membership service annuity which shall be one percent of salary or wages covered by old age and survivors insurance and one and sixty-five hundredths percent of salary or wages above that amount for service performed after September 1, 1963, and prior to September 1, 1969. Commencing September 1, 1969, all employees shall be credited with a membership service annuity which shall be one percent of the first seven thousand eight hundred dollars of salary or wages earned by the employee during each fiscal year and one and sixty-five hundredths percent of salary or wages earned above that amount in the same fiscal year, except that all employees retiring on or after August 31, 1976, shall be credited with a membership service annuity which shall be one and forty-four hundredths percent of the first seven thousand eight hundred dollars of salary or wages earned by the employee during such fiscal year and two and four-tenths percent of salary or wages earned above that amount in the same fiscal year and the retirement annuities of employees who have not retired prior to September 1, 1963, and who elected under the provisions of section 79-988 as such section existed immediately prior to February 20, 1982, not to become members of the system shall not be less than they would have been had they remained under any preexisting system to date of retirement. Members of this system having the service qualifications of members of

the School Retirement System of the State of Nebraska, as provided by section 79-926, shall receive the state service annuity provided by sections 79-933 to 79-935 and 79-951.

(2) The school district 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 in determining federal tax treatment under the Internal Revenue Code, except that the school district 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 employee until such time as they are distributed or made available. The school district shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The school district shall pick up these 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. Beginning September 1, 1995, the school district shall also pick up any contributions required by sections 79-990, 79-991, and 79-992 which are made under an irrevocable payroll deduction authorization between the member and the school district, 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 school district shall continue to withhold federal and state income taxes based upon these contributions until the Internal Revenue Service rules that, pursuant to section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as they are distributed from the system. Employee contributions picked up shall be treated for all purposes of the Class V School Employees Retirement Act in the same manner and to the extent as employee contributions made prior to the date picked up.

Source: Laws 1951, c. 274, § 25, p. 923; Laws 1953, c. 308, § 4, p. 1029; Laws 1955, c. 321, § 3, p. 993; Laws 1963, c. 490, § 5, p. 1567; Laws 1969, c. 724, § 2, p. 2755; Laws 1972, LB 1116, § 3; Laws 1976, LB 994, § 3; Laws 1982, LB 131, § 12; Laws 1983, LB 488, § 1; Laws 1984, LB 218, § 3; Laws 1989, LB 237, § 7; Laws 1995, LB 505, § 8; Laws 1995, LB 574, § 77; R.S.Supp.,1995, § 79-1056; Laws 1996, LB 900, § 648; Laws 1997, LB 623, § 33; Laws 1998, LB 497, § 26; Laws 1998, LB 1191, § 63; Laws 2000, LB 155, § 5; Laws 2007, LB596, § 3.
Effective date May 17, 2007.

Cross Reference

For provisions of federal Social Security Act, see Chapter 68, article 6.

ARTICLE 10

SCHOOL TAXATION, FINANCE, AND FACILITIES

(a) TAX EQUITY AND EDUCATIONAL OPPORTUNITIES SUPPORT ACT

Section.

79-1001. Act, how cited.

79-1003. Terms, defined.

SCHOOLS

- 79-1003.01. Summer school student unit, defined; calculation.
- 79-1007.02. Cost groupings; average formula cost per student; local system's formula need; calculation.
- 79-1007.03. School fiscal year 2008-09 and subsequent fiscal years; adjusted formula students for local system; calculation.
- 79-1007.04. Elementary class size allowance; calculation.
- 79-1007.05. Focus school and program allowance; calculation.
- 79-1007.06. Poverty allowance; calculation.
- 79-1007.07. Financial reports relating to poverty allowance; department; duties; report; appeal of department decisions.
- 79-1007.08. Limited English proficiency allowance; calculation.
- 79-1007.09. Financial reports relating to limited English proficiency; department; duties; report; appeal of department decisions.
- 79-1007.10. Cost growth factor; computation.
- 79-1008.02. Minimum levy adjustment; calculation; effect.
- 79-1012. School District Reorganization Fund; created; use; investment.
- 79-1013. Poverty plan; submission required; when; review; approval; elements required; appeal.
- 79-1014. Limited English proficiency plan; submission required; when; review; approval; elements required; appeal.
- 79-1015. Learning community; preliminary state aid calculations; state aid certification and distribution.
- 79-1015.01. Local system formula resources; local effort rate yield; determination.
- 79-1016. Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited.
- 79-1018.01. Local system formula resources; other actual receipts included.
- 79-1022. Distribution of income tax receipts and state aid; effect on budget.
- 79-1026. School fiscal years prior to 2008-09; applicable allowable growth rate; determination; target budget level.
- 79-1027. Budget; restrictions.
- 79-1028. Applicable allowable growth rate; Class II, III, IV, V, or VI district may exceed; situations enumerated.
- 79-1031.01. Appropriations Committee; duties.

(b) SCHOOL FUNDS

- 79-1072.03. Repealed. Referendum 2006, No. 422.
- 79-1072.04. Repealed. Referendum 2006, No. 422.

(c) SCHOOL TAXATION

- 79-1073. General fund property tax receipts; learning community coordinating council; certification; division; distribution.
- 79-1073.01. Learning communities; special building funds; distribution.

(d) SCHOOL BUDGETS AND ACCOUNTING

- 79-1083.02. Class I school district; primary high school district; designation; certification.
- 79-1083.03. Class I school district; total allowable general fund budget of expenditures; determination; request to exceed; procedure.

(e) SITE AND FACILITIES ACQUISITION, MAINTENANCE, AND DISPOSITION

- 79-10,120. Class II, III, IV, V, or VI school district; board of education; special fund for sites and buildings; levy of taxes.

79-10,126.01. Class V school district member of learning community; school tax; additional levy; funds established.

(f) SCHOOL BREAKFAST PROGRAM

79-10,138. Program qualifications; reimbursement.

(a) TAX EQUITY AND EDUCATIONAL OPPORTUNITIES SUPPORT ACT

79-1001 Act, how cited. Sections 79-1001 to 79-1033 shall be known and may be cited as the Tax Equity and Educational Opportunities Support Act.

Source: Laws 1990, LB 1059, § 1; Laws 1995, LB 542, § 1; Laws 1995, LB 840, § 3; R.S.Supp., 1995, § 79-3801; Laws 1996, LB 900, § 652; Laws 1996, LB 1050, § 10; Laws 1997, LB 806, § 29; Laws 1998, LB 1134, § 1; Laws 1998, LB 1219, § 13; Laws 1999, LB 149, § 1; Laws 2001, LB 833, § 3; Laws 2002, LB 898, § 2; Laws 2004, LB 1091, § 8; Laws 2006, LB 1024, § 71; Laws 2007, LB 641, § 12.
Effective date September 1, 2007.

79-1003 Terms, defined. For purposes of the Tax Equity and Educational Opportunities Support Act:

(1) Adjusted general fund operating expenditures means (a) for school fiscal years before school fiscal year 2007-08, general fund operating expenditures as calculated pursuant to subdivision (24) of this section minus the transportation allowance and minus the special receipts allowance, (b) for school fiscal year 2007-08, general fund operating expenditures as calculated pursuant to subdivision (24) of this section minus the sum of the transportation, special receipts, and distance education and telecommunications allowances, and (c) for school fiscal year 2008-09 and each school fiscal year thereafter, the difference of the product of the general fund operating expenditures as calculated pursuant to subdivision (24) of this section multiplied by the cost growth factor for the school district's cost grouping calculated pursuant to section 79-1007.10 minus the transportation allowance, special receipts allowance, poverty allowance, limited English proficiency allowance, distance education and telecommunications allowance, elementary class size allowance, and focus school and program allowance;

(2) Adjusted valuation means the assessed valuation of taxable property of each local system in the state, adjusted pursuant to the adjustment factors described in section 79-1016. Adjusted valuation means the adjusted valuation for the property tax year ending during the school fiscal year immediately preceding the school fiscal year in which the aid based upon that value is to be paid. For purposes of determining the local effort rate yield pursuant to section 79-1015.01, adjusted valuation does not include the value of any property which a court, by a final judgment from which no appeal is taken, has declared to be nontaxable or exempt from taxation;

(3) Allocated income tax funds means the amount of assistance paid to a local system pursuant to section 79-1005.01 or 79-1005.02 as adjusted by the minimum levy adjustment pursuant to section 79-1008.02;

(4) Average daily attendance of a student who resides on Indian land means average daily attendance of a student who resides on Indian land from the most recent data available on November 1 preceding the school fiscal year in which aid is to be paid;

(5) Average daily membership means the average daily membership for grades kindergarten through twelve attributable to the local system, as provided in each district's annual statistical summary, and includes the proportionate share of students enrolled in a public school instructional program on less than a full-time basis;

(6) Base fiscal year means the first school fiscal year following the school fiscal year in which the reorganization or unification occurred;

(7) Board means the school board of each school district;

(8) Categorical funds means funds limited to a specific purpose by federal or state law, including, but not limited to, Title I funds, Title VI funds, federal vocational education funds, federal school lunch funds, Indian education funds, Head Start funds, and funds from the Education Innovation Fund;

(9) Consolidate means to voluntarily reduce the number of school districts providing education to a grade group and does not include dissolution pursuant to section 79-498;

(10) Converted contract means an expired contract that was in effect for at least fifteen years for the education of students in a nonresident district in exchange for tuition from the resident district when the expiration of such contract results in the nonresident district educating students who would have been covered by the contract if the contract were still in effect as option students pursuant to the enrollment option program established in section 79-234;

(11) Converted contract option students means students who will be option students pursuant to the enrollment option program established in section 79-234 for the school fiscal year for which aid is being calculated and who would have been covered by a converted contract if the contract were still in effect and such school fiscal year is the first school fiscal year for which such contract is not in effect;

(12) Department means the State Department of Education;

(13) Distance education and telecommunications allowance means, for state aid calculated for school fiscal year 2007-08 and each school fiscal year thereafter, eighty-five percent of the difference of the costs for (a) telecommunications services, (b) access to data transmission networks that transmit data to and from the school district, and (c) the transmission of data on such networks paid by the school districts in the local system as reported on the annual financial report for the most recently available complete data year minus the receipts from the federal Universal Service Fund pursuant to section 254 of the Telecommunications Act of 1996, 47 U.S.C. 254, as such section existed on January 1, 2006, for the school districts in the local system as reported on the annual financial report for the most recently available complete data year;

(14) District means any Class I, II, III, IV, V, or VI school district;

(15) Ensuing school fiscal year means the school fiscal year following the current school fiscal year;

(16) Equalization aid means the amount of assistance calculated to be paid to a local system pursuant to sections 79-1008.01 to 79-1022 and 79-1022.02;

(17) Fall membership means the total membership in kindergarten through grade twelve attributable to the local system as reported on the fall school district membership reports for each district pursuant to section 79-528;

(18) Fiscal year means the state fiscal year which is the period from July 1 to the following June 30;

(19) Formula students means (a) for state aid certified pursuant to section 79-1022, the sum of fall membership from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid, multiplied by the average ratio of average daily membership to fall membership for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid and the prior two school fiscal years, plus qualified early childhood education fall membership plus tuitioned students from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid and (b) for final calculation of state aid pursuant to section 79-1065, the sum of average daily membership plus qualified early childhood education average daily membership plus tuitioned students from the school fiscal year immediately preceding the school fiscal year in which the aid was paid;

(20) Free lunch and free milk student means a student who qualified for free lunches or free milk from the most recent data available on November 1 of the school fiscal year immediately preceding the school fiscal year in which aid is to be paid;

(21) Full-day kindergarten means kindergarten offered by a district for at least one thousand thirty-two instructional hours;

(22) General fund budget of expenditures means the total budget of disbursements and transfers for general fund purposes as certified in the budget statement adopted pursuant to the Nebraska Budget Act, except that for purposes of the limitation imposed in section 79-1023, the calculation of Class I total allowable general fund budget of expenditures minus the special education budget of expenditures pursuant to section 79-1083.03, and the calculation pursuant to subdivision (2) of section 79-1027.01, the general fund budget of expenditures does not include any special grant funds, exclusive of local matching funds, received by a district subject to the approval of the department;

(23) General fund expenditures means all expenditures from the general fund;

(24) General fund operating expenditures means the total general fund expenditures minus categorical funds, tuition paid, transportation fees paid to other districts, adult education, summer school, community services, redemption of the principal portion of general fund debt service, retirement incentive plans, staff development assistance, and transfers from other funds into the general fund for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid as reported on the annual financial report prior to December 1 of the school fiscal year immediately preceding the school fiscal year in which aid is to be paid;

(25) High school district means a school district providing instruction in at least grades nine through twelve;

(26) Income tax liability means the amount of the reported income tax liability for resident individuals pursuant to the Nebraska Revenue Act of 1967 less all nonrefundable credits earned and refunds made;

(27) Income tax receipts means the amount of income tax collected pursuant to the Nebraska Revenue Act of 1967 less all nonrefundable credits earned and refunds made;

(28) Limited English proficiency student means a student with limited English proficiency from the most recent data available on November 1 of the school fiscal year preceding the school fiscal year in which aid is to be paid;

(29) Local system means a Class VI district and the associated Class I districts or a Class II, III, IV, or V district and any affiliated Class I districts or portions of Class I districts and for school fiscal year 2008-09 and each school fiscal year thereafter, a learning community or a Class II, III, IV, or V district that is not a member of a learning community. The membership, expenditures, and resources of Class I districts that are affiliated with multiple high school districts will be attributed to local systems based on the percent of the Class I valuation that is affiliated with each high school district;

(30) Low-income child means (a) for school fiscal years prior to 2008-09, a child under nineteen years of age living in a household having an annual adjusted gross income of fifteen thousand dollars or less for the second calendar year preceding the beginning of the school fiscal year for which aid is being calculated and (b) for school fiscal year 2008-09 and each school fiscal year thereafter, a child under nineteen years of age living in a household having an annual adjusted gross income for the second calendar year preceding the beginning of the school fiscal year for which aid is being calculated equal to or less than the maximum household income that would allow a student from a family of four people to be a free lunch and free milk student during the school fiscal year immediately preceding the school fiscal year for which aid is being calculated;

(31) Low-income students means the number of low-income children within the local system multiplied by the ratio of the formula students in the local system divided by the total children under nineteen years of age residing in the local system as derived from income tax information;

(32) Most recently available complete data year means the most recent single school fiscal year for which the annual financial report, fall school district membership report, annual statistical summary, Nebraska income tax liability by school district for the calendar year in which the majority of the school fiscal year falls, and adjusted valuation data are available;

(33) Poverty students means the number of low-income students or the number of students who are free lunch and free milk students in a local system, whichever is greater;

(34) Qualified early childhood education average daily membership means the product of the average daily membership for school fiscal year 2006-07 and each school fiscal year thereafter of students who will be eligible to attend kindergarten the following school year and are enrolled in an early childhood education program approved by the department pursuant to

section 79-1103 for such school district for such school year if: (a) The program is receiving a grant pursuant to such section for the third year; (b) the program has already received grants pursuant to such section for three years; or (c) the program has been approved pursuant to subsection (5) of section 79-1103 for such school year and the two preceding school years, including any such students in portions of any of such programs receiving an expansion grant, multiplied by the ratio of the actual instructional hours of the program divided by one thousand thirty-two;

(35) Qualified early childhood education fall membership means the product of membership on the last Friday in September 2006 and each year thereafter of students who will be eligible to attend kindergarten the following school year and are enrolled in an early childhood education program approved by the department pursuant to section 79-1103 for such school district for such school year if: (a) The program is receiving a grant pursuant to such section for the third year; (b) the program has already received grants pursuant to such section for three years; or (c) the program has been approved pursuant to subsection (5) of section 79-1103 for such school year and the two preceding school years, including any such students in portions of any of such programs receiving an expansion grant, multiplied by the ratio of the planned instructional hours of the program divided by one thousand thirty-two;

(36) Regular route transportation means the transportation of students on regularly scheduled daily routes to and from the attendance center;

(37) Reorganized district means any district involved in a consolidation and currently educating students following consolidation;

(38) School year or school fiscal year means the fiscal year of a school district as defined in section 79-1091;

(39) Special education means specially designed kindergarten through grade twelve instruction pursuant to section 79-1125, and includes special education transportation;

(40) Special grant funds means the budgeted receipts for grants, including, but not limited to, Title I funds, Title VI funds, funds from the Education Innovation Fund, reimbursements for wards of the court, short-term borrowings including, but not limited to, registered warrants and tax anticipation notes, interfund loans, insurance settlements, and reimbursements to county government for previous overpayment. The state board shall approve a listing of grants that qualify as special grant funds;

(41) Special receipts allowance means the amount of special education, state ward, and accelerated or differentiated curriculum program receipts included in local system formula resources under subdivisions (7), (8), (16), and (17) of section 79-1018.01 attributable to the school district;

(42) State aid means the amount of assistance paid to a district pursuant to the Tax Equity and Educational Opportunities Support Act;

(43) State board means the State Board of Education;

(44) State support means all funds provided to districts by the State of Nebraska for the general fund support of elementary and secondary education;

(45) Temporary aid adjustment factor means (a) for school fiscal years before school fiscal year 2007-08, one and one-fourth percent of the sum of the local system's transportation allowance, the local system's special receipts allowance, and the product of the local system's adjusted formula students multiplied by the average formula cost per student in the local system's cost grouping and (b) for school fiscal year 2007-08, one and one-fourth percent of the sum of the local system's transportation allowance, special receipts allowance, and distance education and telecommunications allowance and the product of the local system's adjusted formula students multiplied by the average formula cost per student in the local system's cost grouping;

(46) Transportation allowance means the lesser of (a) each local system's general fund expenditures for regular route transportation and in lieu of transportation expenditures pursuant to section 79-611 in the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid, but not including special education transportation expenditures or other expenditures previously excluded from general fund operating expenditures, or (b) the number of miles traveled in the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid by vehicles owned, leased, or contracted by the district or the districts in the local system for the purpose of regular route transportation multiplied by four hundred percent of the mileage rate established by the Department of Administrative Services pursuant to section 81-1176 as of January 1 of the most recently available complete data year added to in lieu of transportation expenditures pursuant to section 79-611 from the same data year;

(47) Tuition receipts from converted contracts means tuition receipts received by a district from another district in the most recently available complete data year pursuant to a converted contract prior to the expiration of the contract; and

(48) Tuitioned students means students in kindergarten through grade twelve of the district whose tuition is paid by the district to some other district or education agency.

Source: Laws 1990, LB 1059, § 3; Laws 1991, LB 511, § 71; Laws 1992, LB 245, § 76; Laws 1994, LB 1290, § 3; Laws 1995, LB 840, § 4; R.S.Supp., 1995, § 79-3803; Laws 1996, LB 900, § 654; Laws 1996, LB 1050, § 12; Laws 1997, LB 347, § 29; Laws 1997, LB 710, § 5; Laws 1997, LB 713, § 1; Laws 1997, LB 806, § 31; Laws 1998, LB 306, § 42; Laws 1998, LB 1134, § 2; Laws 1998, LB 1219, § 15; Laws 1998, LB 1229, § 3; Laws 1998, Spec. Sess., LB 1, § 15; Laws 1999, LB 149, § 3; Laws 1999, LB 813, § 19; Laws 2001, LB 313, § 1; Laws 2001, LB 797, § 18; Laws 2001, LB 833, § 4; Laws 2002, LB 898, § 3; Laws 2005, LB 126, § 45; Laws 2005, LB 577, § 1; Laws 2006, LB 1024, § 73; Laws 2006, LB 1208, § 4; Referendum 2006, No. 422; Laws 2007, LB 641, § 13. Effective date September 1, 2007.

Cross Reference

Nebraska Budget Act, see section 13-501.

Nebraska Revenue Act of 1967, see section 77-2701.

79-1003.01 Summer school student unit, defined; calculation. For purposes of this section and section 79-1007.03, summer school student unit means one student enrolled in summer school in a school district, whether or not the student is in the membership of the school district, for (1) at least three hours but fewer than six hours per day and (2) at least twelve days but fewer than twenty-four days. Each school district shall receive a summer

school student unit for each qualified time period for which a student is enrolled, up to six units per student per summer.

Each school district shall receive an additional summer school student unit for each summer school student unit attributed to remedial math or reading programs. Each school district shall also receive an additional summer school student unit for each summer school student unit attributed to a free lunch and free milk student. This section does not prevent school districts from requiring and collecting fees for summer school, except that summer school student units shall not be calculated for summer school programs for which fees are collected from students who qualify for free or reduced-price lunches under United States Department of Agriculture child nutrition programs.

Source: Laws 2007, LB641, § 14.
Effective date September 1, 2007.

79-1007.02 Cost groupings; average formula cost per student; local system's formula need; calculation. For state aid calculated for school fiscal year 1998-99 and each school fiscal year thereafter:

(1) Using data from the annual financial reports for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid, the annual statistical summary reports for the school fiscal year immediately preceding the school fiscal year in which aid is to be paid, the fall membership reports and supplements thereto for the school fiscal year immediately preceding the school fiscal year in which aid is to be paid, and the school district census as reported under sections 79-524 and 79-578 for the second school fiscal year preceding the school fiscal year in which aid is to be paid, the department shall divide the local systems into three cost groupings prior to the certification of state aid based upon the following criteria:

(a) The very sparse cost grouping will consist of local systems that have (i)(A) less than one-half student per square mile in each county in which each high school attendance center is located, based on the school district census, (B) less than one formula student per square mile in the local system, and (C) more than fifteen miles between the high school attendance center and the next closest high school attendance center on paved roads or (ii)(A) more than four hundred fifty square miles in the local system, (B) less than one-half student per square mile in the local system, and (C) more than fifteen miles between each high school attendance center and the next closest high school attendance center on paved roads;

(b) The sparse cost grouping will consist of local systems that do not qualify for the very sparse cost grouping but which meet the following criteria:

(i)(A) Less than two students per square mile in the county in which each high school is located, based on the school district census, (B) less than one formula student per square mile in the local system, and (C) more than ten miles between each high school attendance center and the next closest high school attendance center on paved roads;

(ii)(A) Less than one and one-half formula students per square mile in the local system and (B) more than fifteen miles between each high school attendance center and the next closest high school attendance center on paved roads;

(iii)(A) Less than one and one-half formula students per square mile in the local system and (B) more than two hundred seventy-five square miles in the local system; or

(iv)(A) Less than two formula students per square mile in the local system and (B) the local system includes an area equal to ninety-five percent or more of the square miles in the largest county in which a high school attendance center is located in the local system; and

(c) The standard cost grouping will consist of local systems that do not qualify for the very sparse or the sparse cost groupings.

For purposes of subdivision (1) of this section, if a local system did not operate and offer instruction in grades nine through twelve within the boundaries of the local system during the school fiscal year immediately preceding the school fiscal year in which aid is to be paid, the local system shall not be considered to have a high school attendance center;

(2)(a) The department shall calculate the average formula cost per student in each cost grouping by dividing the total estimated general fund operating expenditures for the cost grouping by the difference between the total adjusted formula students for all local systems in the cost grouping minus (i) the adjusted formula students attributed to early childhood education programs approved by the department pursuant to section 79-1103 for the first two school fiscal years for which students attributed to early childhood education programs approved by the department pursuant to section 79-1103 are being included in the calculation of state aid for the local system and (ii) for the first two school fiscal years immediately following the school fiscal year in which a district in the local system received an expansion grant pursuant to section 79-1103, the difference between the adjusted formula students attributed to early childhood education programs approved by the department pursuant to section 79-1103 for the school fiscal year immediately following the school fiscal year in which a district in the local system received an expansion grant minus the adjusted formula students attributed to early childhood education programs approved by the department pursuant to section 79-1103 for the school fiscal year in which a district in the local system received an expansion grant. For the calculation of state aid for school fiscal year 1999-00 and for each school fiscal year thereafter, the average formula cost per student in each cost grouping shall not be recalculated for the final calculation of state aid pursuant to section 79-1065. The calculation of total adjusted formula students for purposes of this subdivision shall take into account the requirements of subdivision (2) of section 79-1007.01. For school fiscal years prior to school fiscal year 2008-09, the total estimated general fund operating expenditures for the cost grouping is equal to the total adjusted general fund operating expenditures for all local systems in the cost grouping multiplied by a cost growth factor. For school fiscal year 2008-09 and each school fiscal year thereafter, the total estimated general fund operating expenditures for the cost grouping is equal to the total adjusted general fund operating expenditures for all local systems in the cost grouping.

(b) For school fiscal years prior to school fiscal year 2008-09, the cost growth factor for each cost grouping is equal to the sum of: (i) One; plus (ii) the product of two times the ratio of the difference of (A) the formula students attributable to the cost grouping without weighting or adjustment pursuant to section 79-1007.01 minus the qualified early childhood education fall membership attributable to the cost grouping without such weighting or adjustment for state aid certified pursuant to section 79-1022 minus (B) the difference of the sum of the average daily membership plus tuitioned students attributable to the cost grouping for the most recently available complete data year minus the qualified early childhood education average daily membership attributable to the cost grouping without such weighting or adjustment for the most recently available complete data year divided by the difference of the sum of the average daily membership plus tuitioned students attributable to the cost grouping for the most recently available complete data year minus the qualified early childhood education average daily membership attributable to the cost grouping without such weighting or adjustment for the most recently available complete data year, except that the ratio shall not be less than zero; plus (iii) the basic allowable growth rate pursuant to section 79-1025 for the school fiscal year in which the aid is to be distributed; plus (iv) the basic allowable growth rate pursuant to section 79-1025 for the school fiscal year immediately preceding the school fiscal year in which the aid is to be distributed; plus (v) one-half of any additional growth rate allowed by special action of school boards for the school fiscal year in which the aid is to be distributed as determined for the school fiscal year immediately preceding the school fiscal year when aid is to be distributed; plus (vi) one-half of any additional growth rate allowed by special action of the school boards for the school fiscal year immediately preceding the school fiscal year when the aid is to be distributed;

(3) For school fiscal years 2002-03 through 2006-07, each local system's formula need shall be calculated by subtracting the temporary aid adjustment factor from the sum of the local system's transportation allowance, the local system's special receipts allowance, and the product of the local system's adjusted formula students multiplied by the average formula cost per student in the local system's cost grouping. The calculation of total adjusted formula students for purposes of this subdivision shall take into account the requirements of subdivision (2) of section 79-1007.01;

(4) For school fiscal year 2007-08, each local system's formula need shall be calculated by subtracting the temporary aid adjustment factor from the sum of the local system's transportation allowance, special receipts allowance, and distance education and telecommunications allowance and the product of the local system's adjusted formula students multiplied by the average formula cost per student in the local system's cost grouping. The calculation of total adjusted formula students for purposes of this subdivision shall take into account the requirements of subdivision (2) of section 79-1007.01; and

(5) For school fiscal year 2008-09 and each school fiscal year thereafter, each school district's formula need shall equal the greater of (a) the difference of the sum of the school district's transportation allowance, elementary class size allowance, focus school

and program allowance, limited English proficiency allowance, poverty allowance, special receipts allowance, and distance education and telecommunications allowance plus the product of the school district's adjusted formula students multiplied by the average formula cost per student in the school district's local system cost grouping minus the sum of the limited English proficiency allowance correction and poverty allowance correction or (b) if the school district's general fund levy was at or above ninety-five percent of the school district's maximum levy pursuant to section 77-3442, the school district's prior year formula need multiplied by one hundred percent. The calculation of total adjusted formula students for purposes of this subdivision shall take into account the requirements of subdivision (2) of section 79-1007.03.

Source: Laws 1997, LB 710, § 10; Laws 1997, LB 806, § 36; Laws 1998, LB 989, § 6; Laws 1998, Spec. Sess., LB 1, § 18; Laws 1999, LB 149, § 5; Laws 1999, LB 813, § 20; Laws 2002, LB 898, § 7; Laws 2003, LB 67, § 11; Laws 2004, LB 1093, § 4; Laws 2005, LB 577, § 3; Laws 2006, LB 1024, § 76; Laws 2006, LB 1208, § 5; Laws 2007, LB21, § 1; Laws 2007, LB641, § 15.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 21, section 1, with LB 641, section 15, to reflect all amendments.

Note: The changes made by LB 21 became effective February 1, 2007. The changes made by LB 641 became effective September 1, 2007.

79-1007.03 School fiscal year 2008-09 and subsequent fiscal years; adjusted formula students for local system; calculation. For state aid calculated for school fiscal year 2008-09 and each school fiscal year thereafter:

- (1) The adjusted formula students for each school district shall be calculated by:
 - (a) Multiplying the formula students in each grade range by the corresponding weighting factors to calculate the weighted formula students for each grade range as follows:
 - (i) The weighting factor for early childhood education programs is six-tenths;
 - (ii) The weighting factor for kindergarten is five-tenths;
 - (iii) The weighting factor for grades one through six, including full-day kindergarten, is one;
 - (iv) The weighting factor for grades seven and eight is one and two-tenths; and
 - (v) The weighting factor for grades nine through twelve is one and four-tenths;
 - (b) Adding the weighted formula students for each grade range to calculate the weighted formula students for the local system; and
 - (c) Adjusting the weighted formula students by adding the following demographic factors:
 - (i) The Indian-land factor shall equal 0.25 times the average daily attendance of students who reside on Indian land as reported by the United States Department of Education in calculating the local system's payment pursuant to 20 U.S.C. 7701 et seq., as such sections existed on January 1, 2006;
 - (ii) The extreme remoteness factor shall equal 0.125 times the formula students in the school district for each school district that has fewer than two hundred formula students, more than six hundred square miles in the school district, less than three-tenths formula student per square mile in the local system, and more than twenty-five miles between the high school attendance center and the next closest high school attendance center on paved roads; and

(iii) The summer school factor shall equal 0.025 times the number of summer school student units as defined in section 79-1003.01; and

(2) The total adjusted formula students for each school district shall equal the weighted formula students plus the demographic factors, except that (a) for school districts qualifying for the extreme remoteness factor, the total adjusted formula students shall be greater than or equal to one hundred fifty adjusted formula students, (b) the total adjusted formula students for a school district shall not include the summer school factor, the extreme remoteness factor, or any adjustment to the adjusted formula students resulting from qualification for the extreme remoteness factor for the calculation of the average formula cost per student in each cost grouping pursuant to section 79-1007.02, and (c) the total adjusted formula students for a school district shall include the summer school factor, the extreme remoteness factor, and any adjustment to the adjusted formula students resulting from qualification for the extreme remoteness factor for the calculation of the school district's formula need pursuant to section 79-1007.02.

Source: Laws 2006, LB 1024, § 75; Laws 2007, LB641, § 16.
Effective date September 1, 2007.

79-1007.04 Elementary class size allowance; calculation. For school fiscal year 2008-09 and each school fiscal year thereafter, the department shall determine the elementary class size allowance for each school district. The allowance shall equal the statewide average general fund operating expenditures per formula student multiplied by 0.20 then multiplied by the number of students in the school district in kindergarten through grade eight who qualify for free or reduced-price lunches and who spend at least fifty percent of the school day in a classroom with a minimum of ten students and a maximum of twenty students as reported on the fall membership report from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid for state aid certified pursuant to section 79-1022 and as reported on the annual statistical summary report from the school fiscal year immediately preceding the school fiscal year in which the aid was paid for the final calculation of state aid pursuant to section 79-1065.

Source: Laws 2006, LB 1024, § 77; Laws 2007, LB641, § 17.
Effective date September 1, 2007.

79-1007.05 Focus school and program allowance; calculation. For school fiscal year 2008-09 and each school fiscal year thereafter, the department shall determine the focus school and program allowance for each school district in a learning community. The focus school and program allowance shall equal the statewide average general fund operating expenditures per formula student multiplied by 0.10 then multiplied by the number of students participating in a focus school or program as reported on the fall membership report from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid for state aid certified pursuant to section 79-1022 and as reported on the annual statistical

summary report from the school fiscal year immediately preceding the school fiscal year in which the aid was paid for the final calculation of state aid pursuant to section 79-1065.

Source: Laws 2006, LB 1024, § 78; Laws 2007, LB641, § 18.
Effective date September 1, 2007.

79-1007.06 Poverty allowance; calculation. (1) For school fiscal year 2008-09 and each school fiscal year thereafter, the department shall determine the poverty allowance for each school district that meets the requirements of this section and has not been disqualified pursuant to section 79-1007.07. Each school district shall designate a maximum poverty allowance on a form prescribed by the department on or before November 1 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. The school district may decline to participate in the poverty allowance by providing the department with a maximum poverty allowance of zero dollars on such form on or before November 1 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. Each school district designating a maximum poverty allowance greater than zero dollars shall submit a poverty plan pursuant to section 79-1013.

(2) The poverty allowance for each school district that has not been disqualified pursuant to section 79-1007.07 shall equal the lesser of:

(a) The maximum amount designated pursuant to subsection (1) of this section by the school district in the local system, if such school district designated a maximum amount, for the school fiscal year for which aid is being calculated; or

(b) Sixty-one percent of the sum of:

(i) The statewide average general fund operating expenditures per formula student multiplied by 0.05 then multiplied by the poverty students comprising more than five percent and not more than ten percent of the formula students in the school district; plus

(ii) The statewide average general fund operating expenditures per formula student multiplied by 0.10 then multiplied by the poverty students comprising more than ten percent and not more than fifteen percent of the formula students in the school district; plus

(iii) The statewide average general fund operating expenditures per formula student multiplied by 0.15 then multiplied by the poverty students comprising more than fifteen percent and not more than twenty percent of the formula students in the school district; plus

(iv) The statewide average general fund operating expenditures per formula student multiplied by 0.20 then multiplied by the poverty students comprising more than twenty percent and not more than twenty-five percent of the formula students in the school district; plus

(v) The statewide average general fund operating expenditures per formula student multiplied by 0.25 then multiplied by the poverty students comprising more than twenty-five percent and not more than thirty percent of the formula students in the school district; plus

(vi) The statewide average general fund operating expenditures per formula student multiplied by 0.30 then multiplied by the poverty students comprising more than thirty percent of the formula students in the school district.

Source: Laws 2006, LB 1024, § 79; Laws 2007, LB641, § 19.
Effective date September 1, 2007.

79-1007.07 Financial reports relating to poverty allowance; department; duties; report; appeal of department decisions. (1)(a) For school fiscal year 2007-08, the annual financial report required pursuant to section 79-528 shall include:

(i) The amount of federal funds received based on poverty as defined by the federal program providing the funds; and

(ii) The expenditures and sources of funding for each program related to poverty with a narrative description of the program and the method used to allocate money to the program and within the program.

(b) The department shall set up accounting codes for the receipts and expenditures required to be reported on the annual financial report pursuant to this subsection. The department shall also determine for each school district an amount that shall be deemed the poverty allowance for purposes of this section. Such amount shall equal the adjustments to the weighted formula students pursuant to subdivision (1)(c)(iii) of section 79-1007.01 multiplied by the average formula cost per student in the school district's cost grouping.

(2)(a) For school fiscal year 2008-09 and each school fiscal year thereafter, the annual financial report required pursuant to section 79-528 shall include:

(i) The amount of the poverty allowance used in the certification of state aid pursuant to section 79-1022 for such school fiscal year;

(ii) The amount of federal funds received based on poverty as defined by the federal program providing the funds;

(iii) The expenditures and sources of funding for each program related to poverty with a narrative description of the program, the method used to allocate money to the program and within the program, and the program's relationship to the poverty plan submitted pursuant to section 79-1013 for such school fiscal year; and

(iv) An explanation of how any required elements of the poverty plan for such school fiscal year were met.

(b) The department shall set up accounting codes for the receipts and expenditures required to be reported on the annual financial report pursuant to this subsection.

(3) For school fiscal year 2009-10 and each school fiscal year thereafter, the department shall determine the poverty allowance expenditures using the reported expenditures on the annual financial report for the most recently available complete data year that would include in the poverty allowance expenditures only those expenditures that were used to specifically address issues related to the education of students living in poverty, that do not replace expenditures that would have occurred if the students involved in the program did not live in poverty, and that are not paid for with federal funds. The department shall establish a procedure to allow school districts to receive preapproval for categories of expenditures that could be included in poverty allowance expenditures.

(4) For school fiscal year 2009-10 and each school fiscal year thereafter, if the poverty allowance expenditures do not equal 117.65 percent or more of the poverty allowance for the most recently available complete data year, the department shall calculate a poverty allowance correction. The poverty allowance correction shall equal the poverty allowance minus eighty-five percent of the poverty allowance expenditures. If the poverty allowance expenditures do not equal fifty percent or more of the allowance for such school fiscal year, the school district shall also be disqualified from receiving a poverty allowance for the school fiscal year for which aid is being calculated.

(5) For school fiscal year 2010-11 and each school fiscal year thereafter, if the department determines that the school district did not meet the required elements of the poverty plan for the most recently available complete data year, the department shall calculate a poverty allowance correction equal to fifty percent of the poverty allowance for such school fiscal year and the school district shall also be disqualified from receiving a poverty allowance for the school fiscal year for which aid is being calculated. Any poverty allowance correction calculated pursuant to this subsection shall be added to any poverty allowance correction calculated pursuant to subsection (4) of this section to arrive at the total poverty allowance correction.

(6) The department may request additional information from any school district to assist with calculations and determinations pursuant to this section. If the school district does not provide information upon the request of the department pursuant to this section, the school district shall be disqualified from receiving a poverty allowance for the school fiscal year for which aid is being calculated.

(7) The department shall annually provide the Legislature with a report containing a general description of the expenditures and funding sources for programs related to poverty statewide and specific descriptions of the expenditures and funding sources for programs related to poverty for each school district.

(8) The state board shall establish a procedure for appeal of decisions of the department to the state board for a final determination.

Source: Laws 2006, LB 1024, § 80; Laws 2007, LB641, § 20.
Effective date September 1, 2007.

79-1007.08 Limited English proficiency allowance; calculation. (1) For school fiscal year 2008-09 and each school fiscal year thereafter, the department shall determine the limited English proficiency allowance for each school district that meets the requirements of this section and has not been disqualified pursuant to section 79-1007.09. Each school district shall designate a maximum limited English proficiency allowance on or before November 1 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. The school district may decline to participate in the limited English proficiency allowance by providing the department with a maximum limited English proficiency allowance of zero dollars on such form on or before November 1 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated.

Each school district designating a maximum limited English proficiency allowance greater than zero dollars shall submit a limited English proficiency plan pursuant to section 79-1014.

(2) The limited English proficiency allowance for each school district that has not been disqualified pursuant to section 79-1007.09 shall equal the lesser of:

(a) The amount designated pursuant to subsection (1) of this section by the school district, if such school district designated a maximum amount, for the school fiscal year for which aid is being calculated; or

(b) The statewide average general fund operating expenditures per formula student multiplied by 0.25 then multiplied by:

(i) The number of students in the school district who are limited English proficient as defined under 20 U.S.C. 7801, as such section existed on January 1, 2006, if such number is greater than or equal to twelve;

(ii) Twelve, if the number of students in the school district who are limited English proficient as defined under 20 U.S.C. 7801, as such section existed on January 1, 2006, is greater than or equal to one and less than twelve; or

(iii) Zero, if the number of students in the school district who are limited English proficient as defined under 20 U.S.C. 7801, as such section existed on January 1, 2006, is less than one.

Source: Laws 2006, LB 1024, § 81; Laws 2007, LB641, § 21.
Effective date September 1, 2007.

79-1007.09 Financial reports relating to limited English proficiency; department; duties; report; appeal of department decisions. (1)(a) For school fiscal year 2007-08, the annual financial report required pursuant to section 79-528 shall include:

(i) The amount of federal funds received based on students who are limited English proficient as defined by the federal program providing the funds; and

(ii) The expenditures and sources of funding for each program related to limited English proficiency with a narrative description of the program and the method used to allocate money to the program and within the program.

(b) The department shall set up accounting codes for the receipts and expenditures required to be reported on the annual financial report pursuant to this subsection. The department shall also determine for each school district an amount that shall be deemed the limited English proficiency allowance for purposes of this section. Such amount shall equal the adjustments to the weighted formula students pursuant to subdivision (1)(c)(ii) of section 79-1007.01 multiplied by the average formula cost per student in the school district's cost grouping.

(2)(a) For school fiscal year 2008-09 and each school fiscal year thereafter, the annual financial report required pursuant to section 79-528 shall include:

(i) The amount of the limited English proficiency allowance used in the certification of state aid pursuant to section 79-1022 for such school fiscal year;

(ii) The amount of federal funds received based on students who are limited English proficient as defined by the federal program providing the funds;

(iii) The expenditures and sources of funding for each program related to limited English proficiency with a narrative description of the program, the method used to allocate money to the program and within the program, and the program's relationship to the limited English proficiency plan submitted pursuant to section 79-1014 for such school fiscal year; and

(iv) An explanation of how any required elements of the limited English proficiency plan for such school fiscal year were met.

(b) The department shall set up accounting codes for the receipts and expenditures required to be reported on the annual financial report pursuant to this subsection.

(3) For school fiscal year 2009-10 and each school fiscal year thereafter, the department shall determine the limited English proficiency allowance expenditures using the reported expenditures on the annual financial report for the most recently available complete data year that would only include in the limited English proficiency allowance expenditures those expenditures that were used to specifically address issues related to the education of students with limited English proficiency, that do not replace expenditures that would have occurred if the students involved in the program did not have limited English proficiency, and that are not paid for with federal funds. The department shall establish a procedure to allow school districts to receive preapproval for categories of expenditures that could be included in limited English proficiency allowance expenditures.

(4) For school fiscal year 2009-10 and each school fiscal year thereafter, if the limited English proficiency allowance expenditures do not equal 117.65 percent or more of the limited English proficiency allowance for the most recently available complete data year, the department shall calculate a limited English proficiency allowance correction. The limited English proficiency allowance correction shall equal the limited English proficiency allowance minus eighty-five percent of the limited English proficiency allowance expenditures. If the limited English proficiency allowance expenditures do not equal fifty percent or more of the allowance for such school fiscal year, the school district shall also be disqualified from receiving a limited English proficiency allowance for the school fiscal year for which aid is being calculated.

(5) For school fiscal year 2010-11 and each school fiscal year thereafter, if the department determines that the school district did not meet the required elements of the limited English proficiency plan for the most recently available complete data year, the department shall calculate a limited English proficiency allowance correction equal to fifty percent of the limited English proficiency allowance for such school fiscal year and the school district shall also be disqualified from receiving a limited English proficiency allowance for the school fiscal year for which aid is being calculated. Any limited English proficiency allowance correction calculated pursuant to this subsection shall be added to any limited English proficiency allowance correction calculated pursuant to subsection (4) of this section to arrive at the total limited English proficiency allowance correction.

(6) The department may request additional information from any school district to assist with calculations and determinations pursuant to this section. If the school district does not provide information upon the request of the department pursuant to this section, the school

district shall be disqualified from receiving a limited English proficiency allowance for the school fiscal year for which aid is being calculated.

(7) The department shall annually provide the Legislature with a report containing a general description of the expenditures and funding sources for programs related to limited English proficiency statewide and specific descriptions of the expenditures and funding sources for programs related to limited English proficiency for each school district.

(8) The state board shall establish a procedure for appeal of decisions of the department to the state board for a final determination.

Source: Laws 2006, LB 1024, § 82; Laws 2007, LB641, § 22.
Effective date September 1, 2007.

79-1007.10 Cost growth factor; computation. For state aid calculated for school fiscal year 2008-09 and each school fiscal year thereafter, the cost growth factor for each cost grouping is equal to the sum of: (1) One; plus (2) the product of two times the ratio of the difference of (a) the formula students attributable to the cost grouping without weighting or adjustment pursuant to section 79-1007.03 minus the qualified early childhood education fall membership attributable to the cost grouping without such weighting or adjustment for state aid certified pursuant to section 79-1022 minus (b) the difference of the sum of the average daily membership plus tuitioned students attributable to the cost grouping for the most recently available complete data year minus the qualified early childhood education average daily membership attributable to the cost grouping without such weighting or adjustment for the most recently available complete data year divided by the difference of the sum of the average daily membership plus tuitioned students attributable to the cost grouping for the most recently available complete data year minus the qualified early childhood education average daily membership attributable to the cost grouping without such weighting or adjustment for the most recently available complete data year, except that the ratio shall not be less than zero; plus (3) the basic allowable growth rate pursuant to section 79-1025 for the school fiscal year in which the aid is to be distributed; plus (4) the basic allowable growth rate pursuant to section 79-1025 for the school fiscal year immediately preceding the school fiscal year in which the aid is to be distributed; plus (5) any additional growth rate allowed by special action of school boards for the school fiscal year in which the aid is to be distributed as determined for the school fiscal year immediately preceding the school fiscal year when aid is to be distributed; plus (6) any additional growth rate allowed by special action of the school boards for the school fiscal year immediately preceding the school fiscal year when the aid is to be distributed.

Source: Laws 2006, LB 1024, § 83; Laws 2007, LB21, § 2.
Effective date February 1, 2007.

79-1008.02 Minimum levy adjustment; calculation; effect. A minimum levy adjustment shall be calculated and applied to any local system that has a general fund common levy for the fiscal year during which aid is certified that is less than the maximum levy,

for such fiscal year for such local system, allowed pursuant to subdivision (2)(a) or (b) of section 77-3442 without a vote pursuant to section 77-3444 less two cents for learning communities and less ten cents for all other local systems. To calculate the minimum levy adjustment, the department shall subtract the local system general fund common levy for such fiscal year for such local system from the maximum levy allowed pursuant to subdivision (2)(a) or (b) of section 77-3442 without a vote pursuant to section 77-3444 less two cents for learning communities and less ten cents for all other local systems and multiply the result by the local system's adjusted valuation divided by one hundred. The minimum levy adjustment shall be added to the formula resources of the local system for the determination of equalization aid pursuant to section 79-1008.01. If the minimum levy adjustment is greater than or equal to the allocated income tax funds calculated pursuant to section 79-1005.01 or 79-1005.02, the local system shall not receive allocated income tax funds. If the minimum levy adjustment is less than the allocated income tax funds calculated pursuant to section 79-1005.01 or 79-1005.02, the local system shall receive allocated income tax funds in the amount of the difference between the allocated income tax funds calculated pursuant to section 79-1005.01 or 79-1005.02 and the minimum levy adjustment. This section does not apply to the calculation of aid for a local system containing a learning community for the first school fiscal year for which aid is calculated for such local system.

Source: Laws 1997, LB 806, § 39; Laws 1998, Spec. Sess., LB 1, § 20; Laws 2001, LB 797, § 21; Laws 2002, LB 898, § 9; Laws 2006, LB 1024, § 85; Laws 2007, LB641, § 26.
Effective date September 1, 2007.

79-1012 School District Reorganization Fund; created; use; investment. The School District Reorganization Fund is created. The fund shall be administered by the department. The fund shall consist of money transferred from the Education Innovation Fund and shall be used to provide payments to reorganized school districts pursuant to section 79-1011 through June 30, 2008, and to provide temporary funding for aggregation routing equipment and network transport costs for Network Nebraska pursuant to section 86-5,101 through June 30, 2010. Any money in excess of the difference of two hundred thousand dollars minus any amount previously used to provide temporary funding for aggregation routing equipment and network transport costs for Network Nebraska pursuant to section 86-5,101 remaining in the fund on July 1, 2008, shall be transferred to the Education Innovation Fund on such date. Any money remaining in the School District Reorganization Fund on July 1, 2010, shall be transferred to the Education Innovation Fund on such date. Any money in the School District Reorganization Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2004, LB 1091, § 10; Laws 2007, LB603, § 4.
Operative date May 31, 2007.

Cross Reference

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

79-1013 Poverty plan; submission required; when; review; approval; elements required; appeal. (1) On or before November 1 of each year, each school district designating a maximum poverty allowance greater than zero dollars shall submit a poverty plan for the next school fiscal year to the department and to the learning community coordinating council of any learning community of which the school district is a member. On or before the immediately following December 1, the department shall approve or disapprove such plan for school districts that are not members of a learning community based on the inclusion of the elements required pursuant to this section. On or before the immediately following December 1, the learning community coordinating council and, as to the applicable portions thereof, each achievement subcouncil, shall approve or disapprove such plan for school districts that are members of such learning community based on the inclusion of such elements. On or before the immediately following December 5, each learning community coordinating council shall certify to the department the approval or disapproval of the poverty plan for each member school district.

(2) In order to be approved pursuant to this section, a poverty plan shall include an explanation of how the school district will address the following issues for such school fiscal year:

(a) Attendance, including absence followup and transportation for students qualifying for free or reduced-price lunches who reside more than one-half mile from the attendance center;

(b) Student mobility, including transportation to allow a student to continue attendance at the same school if the student moves to another attendance area within the same school district or within the same learning community;

(c) Parental involvement at the school-building level with a focus on the involvement of parents in poverty and from other diverse backgrounds;

(d) Parental involvement at the school-district level with a focus on the involvement of parents in poverty and from other diverse backgrounds;

(e) Class size reduction or maintenance of small class sizes for students who qualify for free or reduced-price lunches;

(f) Scheduled teaching time on a weekly basis that will be free from interruptions;

(g) Access to early childhood education programs for children in poverty;

(h) Student access to social workers;

(i) Access to summer school, extended-school-day programs, or extended-school-year programs;

(j) Mentoring for new and newly reassigned teachers;

(k) Professional development for teachers and administrators, focused on addressing the educational needs of students in poverty and students from other diverse backgrounds;

(l) Coordination with elementary learning centers if the school district is a member of a learning community; and

(m) An evaluation to determine the effectiveness of the elements of the poverty plan.

(3) The state board shall establish a procedure for appeal of decisions of the department and of learning community coordinating councils to the state board for a final determination.

Source: Laws 2007, LB641, § 23.
Effective date September 1, 2007.

79-1014 Limited English proficiency plan; submission required; when; review; approval; elements required; appeal. (1) On or before November 1 of each year, each school district designating a maximum limited English proficiency allowance greater than zero dollars shall submit a limited English proficiency plan for the next school fiscal year to the department. On or before the immediately following December 1, the department shall approve or disapprove such plans for school districts that are not members of a learning community, based on the inclusion of the elements required pursuant to this section. On or before the immediately following December 1, the learning community coordinating council, and, as to the applicable portions thereof, each achievement subcouncil, shall approve or disapprove such plan for school districts that are members of such learning community, based on the inclusion of such elements.

(2) In order to be approved pursuant to this section, a limited English proficiency plan must include an explanation of how the school district will address the following issues for such school fiscal year:

- (a) Identification of students with limited English proficiency;
- (b) Instructional approaches;
- (c) Assessment of such students' progress toward mastering the English language; and
- (d) An evaluation to determine the effectiveness of the elements of the limited English proficiency plan.

(3) The state board shall establish a procedure for appeal of decisions of the department to the state board for a final determination.

Source: Laws 2007, LB641, § 24.
Effective date September 1, 2007.

79-1015 Learning community; preliminary state aid calculations; state aid certification and distribution. (1) For the first five complete school fiscal years for a learning community, the department shall calculate two preliminary state aid amounts pursuant to the Tax Equity and Educational Opportunities Support Act for school districts which are members of such learning community, with one amount based on separate local systems and the other amount based on the learning community as a whole. For the preliminary amount based on separate local systems, the department shall calculate the aid for each member school district as if the school district were its own local system, except that in the second through fifth fiscal years, the minimum levy adjustment, if any, shall be based on the general fund common levy for the learning community for the fiscal year during which aid is certified. For the preliminary amount based on the learning community as a whole, formula need shall be calculated separately for each member school district then added together to calculate local system formula need, local system formula resources shall include the formula

resources for all member school districts, and equalization aid shall be calculated based on the local system formula need and the local system formula resources. The local system aid based on such calculation shall be divided among the member school districts proportionally based on the formula need calculated for each member school district in the learning community to calculate the preliminary amount based on the learning community as a whole.

(2) For the first school fiscal year, for each school district that is a member of such learning community, the state aid certified and distributed to such district shall equal one hundred percent of the preliminary amount for such district based on separate local systems.

(3) For the second school fiscal year, for each school district that is a member of such learning community, the state aid certified and distributed to such district shall equal the sum of seventy-five percent of the preliminary amount for such district based on separate local systems plus twenty-five percent of the preliminary amount for such district based on the learning community as a whole.

(4) For the third school fiscal year, for each school district that is a member of such learning community, the state aid certified and distributed to such district shall equal the sum of fifty percent of the preliminary amount for such district based on separate local systems plus fifty percent of the preliminary amount for such district based on the learning community as a whole.

(5) For the fourth school fiscal year, for each school district that is a member of such learning community, the state aid certified and distributed to such district shall equal the sum of twenty-five percent of the preliminary amount for such district based on separate local systems plus seventy-five percent of the preliminary amount for such district based on the learning community as a whole.

(6) For the fifth school fiscal year, for each school district that is a member of such learning community, the state aid certified and distributed to such district shall equal one hundred percent of the preliminary amount for such district based on the learning community as a whole.

Source: Laws 2007, LB641, § 25.
Effective date September 1, 2007.

79-1015.01 Local system formula resources; local effort rate yield; determination. (1) Local system formula resources shall include local effort rate yield which shall be computed as prescribed in this section.

(2) For state aid certified pursuant to section 79-1022, the local effort rate shall be the maximum levy, for the school fiscal year for which aid is being certified, authorized pursuant to subdivision (2)(a) or (c) of section 77-3442 less ten cents. For the final calculation of state aid pursuant to section 79-1065, the local effort rate shall be the rate which, when multiplied by the total adjusted valuation of all taxable property in local systems receiving equalization aid pursuant to the Tax Equity and Educational Opportunities Support Act, will produce the amount needed to support the total formula need of such local systems when added to state

aid appropriated by the Legislature and other actual receipts of local systems described in section 79-1018.01. The local effort rate yield shall be determined by multiplying each local system's total adjusted valuation by the local effort rate.

Source: Laws 1997, LB 806, § 45; Laws 1998, Spec. Sess., LB 1, § 23; Laws 1999, LB 149, § 8; Laws 2001, LB 797, § 24; Laws 2007, LB641, § 27.
Effective date September 1, 2007.

79-1016 Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited. (1) On or before August 25, the county assessor shall certify to the Property Tax Administrator the total taxable value by school district in the county for the current assessment year on forms prescribed by the Tax Commissioner. The county assessor may amend the filing for changes made to the taxable valuation of the school district in the county if corrections or errors on the original certification are discovered. Amendments shall be certified to the Property Tax Administrator on or before September 30.

(2) On or before October 10, the Property Tax Administrator shall compute and certify to the State Department of Education the adjusted valuation for the current assessment year for each class of property in each school district and each local system. The adjusted valuation of property for each school district and each local system, for purposes of determining state aid pursuant to the Tax Equity and Educational Opportunities Support Act, shall reflect as nearly as possible state aid value as defined in subsection (3) of this section. The Property Tax Administrator shall notify each school district and each local system of its adjusted valuation for the current assessment year by class of property on or before October 10. Establishment of the adjusted valuation shall be based on the taxable value certified by the county assessor for each school district in the county adjusted by the determination of the level of value for each school district from an analysis of the comprehensive assessment ratio study or other studies developed by the Property Tax Administrator, in compliance with professionally accepted mass appraisal techniques, as required by section 77-1327. The Tax Commissioner shall adopt and promulgate rules and regulations setting forth standards for the determination of level of value for school aid purposes.

(3) For purposes of this section, state aid value means:

(a) For real property other than agricultural and horticultural land, one hundred percent of actual value;

(b) For agricultural and horticultural land, seventy-five percent of actual value as provided in sections 77-1359 to 77-1363. For agricultural and horticultural land that receives special valuation pursuant to section 77-1344, seventy-five percent of special valuation as defined in section 77-1343; and

(c) For personal property, the net book value as defined in section 77-120.

(4) On or before November 10, any local system may file with the Tax Commissioner written objections to the adjusted valuations prepared by the Property Tax Administrator, stating the reasons why such adjusted valuations are not the valuations required by subsection (3) of this section. The Tax Commissioner shall fix a time for a hearing. Either party shall

be permitted to introduce any evidence in reference thereto. On or before January 1, the Tax Commissioner shall enter a written order modifying or declining to modify, in whole or in part, the adjusted valuations and shall certify the order to the State Department of Education. Modification by the Tax Commissioner shall be based upon the evidence introduced at hearing and shall not be limited to the modification requested in the written objections or at hearing. A copy of the written order shall be mailed to the local system within seven days after the date of the order. The written order of the Tax Commissioner may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013.

(5) On or before November 10, any local system or county official may file with the Tax Commissioner a written request for a nonappealable correction of the adjusted valuation due to clerical error as defined in section 77-128 or, for agricultural and horticultural land, assessed value changes by reason of land qualified or disqualified for special use valuation pursuant to sections 77-1343 to 77-1348. On or before the following January 1, the Tax Commissioner shall approve or deny the request and, if approved, certify the corrected adjusted valuations resulting from such action to the State Department of Education.

(6) On or before May 31 of the year following the certification of adjusted valuation pursuant to subsection (2) of this section, any local system or county official may file with the Tax Commissioner a written request for a nonappealable correction of the adjusted valuation due to changes to the tax list that change the assessed value of taxable property. Upon the filing of the written request, the Tax Commissioner shall require the county assessor to recertify the taxable valuation by school district in the county on forms prescribed by the Tax Commissioner. The recertified valuation shall be the valuation that was certified on the tax list, pursuant to section 77-1613, increased or decreased by changes to the tax list that change the assessed value of taxable property in the school district in the county in the prior assessment year. On or before the following July 31, the Tax Commissioner shall approve or deny the request and, if approved, certify the corrected adjusted valuations resulting from such action to the State Department of Education.

(7) No injunction shall be granted restraining the distribution of state aid based upon the adjusted valuations pursuant to this section.

(8) A school district whose state aid is to be calculated pursuant to subsection (5) of this section and whose state aid payment is postponed as a result of failure to calculate state aid pursuant to such subsection may apply to the state board for lump-sum payment of such postponed state aid. Such application may be for any amount up to one hundred percent of the postponed state aid. The state board may grant the entire amount applied for or any portion of such amount. The state board shall notify the Director of Administrative Services of the amount of funds to be paid in a lump sum and the reduced amount of the monthly payments. The Director of Administrative Services shall, at the time of the next state aid payment made pursuant to section 79-1022, draw a warrant for the lump-sum amount from appropriated funds and forward such warrant to the district.

Source: Laws 1990, LB 1059, § 9; Laws 1991, LB 829, § 32; Laws 1991, LB 511, § 76; Laws 1992, LB 245, § 81; Laws 1992, LB 719A, § 198; Laws 1994, LB 1290, § 7; Laws 1995, LB 490, § 185; R.S.Supp., 1995, § 79-3809; Laws 1996, LB 900, § 662; Laws 1996, LB 934, § 5; Laws 1996, LB 1050, § 24; Laws 1997, LB 270, § 103; Laws 1997, LB 271, § 53; Laws 1997, LB 342, § 4; Laws 1997, LB 595, § 6; Laws 1997, LB 713, § 3; Laws 1997, LB 806, § 46; Laws 1998, Spec. Sess., LB 1, § 24; Laws 1999, LB 194, § 34; Laws 1999, LB 813, § 22; Laws 2000, LB 968, § 80; Laws 2001, LB 170, § 28; Laws 2002, LB 994, § 30; Laws 2004, LB 973, § 66; Laws 2005, LB 126, § 46; Laws 2005, LB 263, § 16; Laws 2006, LB 808, § 46; Laws 2006, LB 968, § 16; Referendum 2006, No. 422; Laws 2007, LB334, § 101.
Operative date July 1, 2007.

Cross Reference

Tax Equalization and Review Commission Act, see section 77-5001.

79-1018.01 Local system formula resources; other actual receipts included. Local system formula resources include other actual receipts available for the funding of general fund operating expenditures as determined by the department for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid, except that receipts from the Community Improvements Cash Fund, receipts acquired pursuant to the Low-Level Radioactive Waste Disposal Act, and, beginning with the calculation of state aid to be distributed in school fiscal year 2004-05, tuition receipts from converted contracts shall not be included. Other actual receipts include:

- (1) Public power district sales tax revenue;
- (2) Fines and license fees;
- (3) Tuition receipts from individuals, other districts, or any other source except receipts derived from adult education, tuition receipts from converted contracts, and receipts from educational entities as defined in section 79-1201.01 for providing distance education courses through the Distance Education Council until July 1, 2008, and the Educational Service Unit Coordinating Council on and after July 1, 2008, to such educational entities;
- (4) Transportation receipts;
- (5) Interest on investments;
- (6) Other miscellaneous noncategorical local receipts, not including receipts from private foundations, individuals, associations, or charitable organizations;
- (7) Special education receipts, excluding grant funds received pursuant to section 9-812;
- (8) Special education receipts and non-special education receipts from the state for wards of the court and wards of the state;
- (9) All receipts from the temporary school fund. Beginning with the calculation of aid for school fiscal year 2002-03 and each school fiscal year thereafter, receipts from the temporary school fund shall only include receipts pursuant to section 79-1035 and the receipt of funds pursuant to section 79-1036 for property leased for a public purpose as set forth in subdivision (1)(a) of section 77-202;
- (10) Motor vehicle tax receipts received on or after January 1, 1998;
- (11) Pro rata motor vehicle license fee receipts;
- (12) Other miscellaneous state receipts excluding revenue from the textbook loan program authorized by section 79-734;

(13) Impact aid entitlements for the school fiscal year which have actually been received by the district to the extent allowed by federal law;

(14) All other noncategorical federal receipts;

(15) All receipts pursuant to the enrollment option program under sections 79-232 to 79-246;

(16) Receipts under the federal Medicare Catastrophic Coverage Act of 1988, as such act existed on May 8, 2001, as authorized pursuant to sections 43-2510 and 43-2511 but only to the extent of the amount the local system would have otherwise received pursuant to the Special Education Act; and

(17) Receipts for accelerated or differentiated curriculum programs pursuant to sections 79-1106 to 79-1108.03.

Source: Laws 1997, LB 710, § 12; Laws 1997, LB 806, § 50; Laws 1998, LB 306, § 44; Laws 1998, LB 1229, § 4; Laws 1998, Spec. Sess., LB 1, § 25; Laws 1999, LB 149, § 9; Laws 2001, LB 797, § 25; Laws 2001, LB 833, § 6; Laws 2006, LB 1208, § 6; Laws 2007, LB603, § 5.
Operative date September 1, 2007.

Cross Reference

Low-Level Radioactive Waste Disposal Act, see section 81-1578.

Special Education Act, see section 79-1110.

79-1022 Distribution of income tax receipts and state aid; effect on budget. (1)

On or before February 1 of each year, the department shall determine the amounts to be distributed to each local system and each district pursuant to the Tax Equity and Educational Opportunities Support Act and shall certify the amounts to the Director of Administrative Services, the Auditor of Public Accounts, each learning community, and each district. The amount to be distributed to each district that is not a member of a learning community from the amount certified for a local system shall be proportional based on the weighted formula students attributed to each district in the local system. For the first five complete school fiscal years for a learning community, the amount to be distributed to each district that is a member of such learning community shall be determined pursuant to section 79-1015. For each school fiscal year thereafter, the amount to be distributed to each district that is a member of a learning community from the amount certified for the local system shall be proportional based on the formula needs calculated for each district in the local system. On or before February 1 of each year, the department shall report the necessary funding level to the Governor, the Appropriations Committee of the Legislature, and the Education Committee of the Legislature. Certified state aid amounts, including adjustments pursuant to section 79-1065.02, shall be shown as budgeted non-property-tax receipts and deducted prior to calculating the property tax request in the district's general fund budget statement as provided to the Auditor of Public Accounts pursuant to section 79-1024.

(2) Except as provided in subsection (8) of section 79-1016 and sections 79-1033 and 79-1065.02, the amounts certified pursuant to subsection (1) of this section shall be distributed in ten as nearly as possible equal payments on the last business day of each month beginning

in September of each ensuing school fiscal year and ending in June of the following year, except that when a school district is to receive a monthly payment of less than one thousand dollars, such payment shall be one lump-sum payment on the last business day of December during the ensuing school fiscal year.

Source: Laws 1990, LB 1059, § 13; Laws 1991, LB 511, § 79; Laws 1992, LB 245, § 84; Laws 1994, LB 1290, § 8; Laws 1994, LB 1310, § 16; Laws 1995, LB 840, § 9; R.S.Supp., 1995, § 79-3813; Laws 1996, LB 900, § 668; Laws 1996, LB 1050, § 30; Laws 1997, LB 710, § 13; Laws 1997, LB 713, § 5; Laws 1997, LB 806, § 51; Laws 1998, Spec. Sess., LB 1, § 28; Laws 1999, LB 149, § 10; Laws 1999, LB 194, § 35; Laws 1999, LB 813, § 23; Laws 2002, LB 898, § 12; Laws 2002, Second Spec. Sess., LB 4, § 1; Laws 2003, LB 67, § 12; Laws 2003, LB 540, § 5; Laws 2004, LB 973, § 67; Laws 2005, LB 126, § 47; Laws 2005, LB 198, § 3; Laws 2006, LB 1024, § 86; Referendum 2006, No. 422; Laws 2007, LB21, § 3; Laws 2007, LB641, § 28.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 21, section 3, with LB 641, section 28, to reflect all amendments.

Note: The changes made by LB 21 became effective February 1, 2007. The changes made by LB 641 became effective September 1, 2007.

79-1026 School fiscal years prior to 2008-09; applicable allowable growth rate; determination; target budget level. For school fiscal years prior to 2008-09: On or before February 15, 2007, and on or before February 1 for each year thereafter, the department shall determine and certify to each Class II, III, IV, V, or VI district an applicable allowable growth rate carried out at least four decimal places for each local system as follows:

(1) The department shall establish a target budget level range of general fund operating expenditure levels for each school fiscal year for each local system which shall begin at twenty percent less than the local system's formula need and end at the local system's formula need. The beginning point of the range shall be assigned a number equal to the maximum allowable growth rate established in section 79-1025, and the end point of the range shall be assigned a number equal to the basic allowable growth rate as prescribed in such section such that the lower end of the range shall be assigned the maximum allowable growth rate and the higher end of the range shall be assigned the basic allowable growth rate; and

(2) For each school fiscal year, each local system's general fund operating expenditures shall be compared to its target budget level along the range described in subdivision (1) of this section to arrive at an applicable allowable growth rate as follows: If each local system's general fund operating expenditures fall below the lower end of the range, such applicable allowable growth rate shall be the maximum growth rate identified in section 79-1025. If each local system's general fund operating expenditures are greater than the higher end of the range, the local system's allowable growth rate shall be the basic allowable growth rate identified in such section. If each local system's general fund operating expenditures fall between the lower end and the higher end of the range, the department shall use a linear interpolation calculation between the end points of the range to arrive at the applicable allowable growth rate for the local system.

Source: Laws 1990, LB 1059, § 17; Laws 1991, LB 511, § 82; Laws 1992, LB 245, § 87; Laws 1996, LB 299, § 29; R.S.1943, (1994), § 79-3817; Laws 1996, LB 900, § 672; Laws 1996, LB 1050, § 31; Laws 1997, LB 710, § 15; Laws 1997, LB 806, § 52; Laws 1998, LB 989, § 10; Laws 1999, LB 149, § 11; Laws 1999, LB 813, § 25; Laws 2001, LB 797, § 27; Laws 2003, LB 67, § 15; Laws 2003, LB 540, § 8; Laws 2005, LB 126, § 48; Laws 2006, LB 1024, § 88; Referendum 2006, No. 422; Laws 2007, LB21, § 4.
Effective date February 1, 2007.

79-1027 Budget; restrictions. No district shall adopt a budget, which includes total requirements of depreciation funds, necessary employee benefit fund cash reserves, and necessary general fund cash reserves, exceeding the applicable allowable reserve percentages of total general fund budget of expenditures as specified in the schedule set forth in this section.

Average daily membership of district	Allowable reserve percentage
0- 471	45
471.01 - 3,044	35
3,044.01 - 10,000	25
10,000.01 and over	20

On or before February 15, 2007, and on or before February 1 each year thereafter, the department shall determine and certify each district's applicable allowable reserve percentage.

Each district with combined necessary general fund cash reserves, total requirements of depreciation funds, and necessary employee benefit fund cash reserves less than the applicable allowable reserve percentage specified in this section may, notwithstanding the district's applicable allowable growth rate, increase its necessary general fund cash reserves such that the total necessary general fund cash reserves, total requirements of depreciation funds, and necessary employee benefit fund cash reserves do not exceed such applicable allowable reserve percentage.

Source: Laws 1990, LB 1059, § 18; Laws 1991, LB 511, § 83; Laws 1992, LB 245, § 88; Laws 1992, LB 1063, § 204; Laws 1992, Second Spec. Sess., LB 1, § 175; R.S.1943, (1994), § 79-3818; Laws 1996, LB 900, § 673; Laws 1998, Spec. Sess., LB 1, § 31; Laws 1999, LB 149, § 12; Laws 1999, LB 813, § 26; Laws 2001, LB 797, § 28; Laws 2002, LB 460, § 2; Laws 2003, LB 67, § 16; Laws 2005, LB 126, § 49; Referendum 2006, No. 422; Laws 2007, LB21, § 5.
Effective date February 1, 2007.

79-1028 Applicable allowable growth rate; Class II, III, IV, V, or VI district may exceed; situations enumerated. (1) A Class II, III, IV, V, or VI school district may exceed its applicable allowable growth rate for (a) expenditures 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 an independent joint entity or joint public agency, (b) expenditures to pay for repairs to infrastructure damaged by a natural disaster

which is declared a disaster emergency pursuant to the Emergency Management Act, (c) expenditures to pay for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a school district which require or obligate a school district to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a school district, (d) expenditures to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment, or (e) expenditures to pay for lease-purchase contracts approved on or after July 1, 1997, and before July 1, 1998, to the extent the lease payments were not budgeted expenditures for fiscal year 1997-98.

(2) A Class II, III, IV, V, or VI district may exceed its applicable allowable growth rate by a specific dollar amount if the district projects an increase in formula students in the district over the current school year greater than twenty-five students or greater than those listed in the schedule provided in this subsection, whichever is less. Districts shall project increases in formula students on forms prescribed by the department. The department shall approve, deny, or modify the projected increases.

Average daily membership of district	Projected increase of formula students by percentage
0- 50	10
50.01 - 250	5
250.01 - 1,000	3
1,000.01 and over	1

The department shall compute the district's estimated allowable budget per pupil using the budgeted general fund expenditures found on the budget statement for the current school year divided by the number of formula students in the current school year and multiplied by the district's applicable allowable growth rate. The resulting allowable budget per pupil shall be multiplied by the projected formula students to arrive at the estimated budget needs for the ensuing year. The department shall allow the district to increase its general fund budget of expenditures for the ensuing school year by the amount necessary to fund the estimated budget needs of the district as computed pursuant to this subsection. On or before July 1, the department shall make available to districts which have been allowed additional growth pursuant to this subsection the necessary document to recalculate the actual formula students of such district. Such document shall be filed with the department under subsection (1) of section 79-1024.

(3) A Class II, III, IV, V, or VI district may exceed its applicable allowable growth rate by a specific dollar amount if construction, expansion, or alteration of district buildings will cause an increase in building operation and maintenance costs of at least five percent. The department shall document the projected increase in building operation and maintenance costs

and may allow a Class II, III, IV, V, or VI district to exceed its applicable allowable growth rate by the amount necessary to fund such increased costs. The department shall compute the actual increased costs for the school year and shall notify the district on or before July 1 of the recovery of the additional growth pursuant to this subsection.

(4) A Class II, III, IV, V, or VI district may exceed its applicable allowable growth rate by a specific dollar amount if the district demonstrates to the satisfaction of the department that it will exceed its applicable allowable growth rate as a result of costs pursuant to the Retirement Incentive Plan authorized in section 79-855 or the Staff Development Assistance authorized in section 79-856. The department shall compute the amount by which the increased cost of such program or programs exceeds the district's applicable allowable growth rate and shall allow the district to increase its general fund expenditures by such amount for that fiscal year.

(5) A Class II, III, IV, or V district may exceed its applicable allowable growth rate by the specific dollar amount of incentive payments or base fiscal year incentive payments to be received in such school fiscal year pursuant to section 79-1011.

(6) A Class II, III, IV, V, or VI district may exceed its applicable allowable growth rate by a specific dollar amount in any year for which the state aid calculation for the local system includes students in the qualified early childhood education fall membership of the district for the first time or for a year in which an early childhood education program of the district is receiving an expansion grant. The department shall compute the amount by which the district may exceed the district's applicable allowable growth rate by multiplying the cost grouping cost per student for the applicable cost grouping by the district's adjusted formula students attributed to early childhood education programs if students are included in the district's qualified early childhood education fall membership for the first time or by the district's adjusted formula students attributed to such early childhood education programs minus the district's adjusted formula students attributed to such early childhood education programs for the prior school fiscal year if a program is receiving an expansion grant in the school fiscal year for which the fall membership is measured. The department shall allow the district to increase its general fund expenditures by such amount for such school fiscal year.

(7) For school fiscal year 2005-06, a Class II, III, IV, V, or VI district may exceed its applicable allowable growth rate by a specific dollar amount not to exceed seventy-four hundredths percent of the amount budgeted for employee salaries for such school fiscal year. For school fiscal year 2006-07, a Class II, III, IV, V, or VI district may exceed its applicable allowable growth rate by a specific dollar amount not to exceed fifty-nine hundredths percent of the amount budgeted for employee salaries for such school fiscal year.

(8) A Class II, III, IV, or V district that is a member of a learning community may exceed its applicable allowable growth rate for the first school fiscal year in which the school district will be a member of a learning community for the full school fiscal year by an amount equal to anticipated increases in transportation expenditures necessary to meet the requirements of subsection (2) of section 79-611 as approved by the department. The department shall approve, deny, or modify the amount allowed for anticipated increases in transportation

expenditures. The department shall compute the actual increase in transportation expenditures necessary to meet the requirements of subsection (2) of section 79-611 for such school fiscal year and shall, if needed, modify the district's applicable allowable growth rate for the ensuing school fiscal year.

(9) For school fiscal year 2008-09, a Class II, III, IV, or V district may exceed its applicable allowable growth rate by a specific dollar amount if the sum of the poverty allowance, elementary class size allowance, focus school and program allowance, and limited English proficiency allowance for the school district for school fiscal year 2008-09 exceeds the poverty weightings plus limited English proficiency weightings multiplied by the cost grouping cost per student for the school district for school fiscal year 2007-08. The department shall compute the amount by which the district may exceed the applicable allowable growth rate by subtracting the product of the sum of the poverty weightings and limited English proficiency weightings for school fiscal year 2007-08 multiplied by the average formula cost per student in the school district's cost grouping for school fiscal year 2007-08 from the sum of the school fiscal year 2008-09 poverty allowance, elementary class size allowance, focus school and program allowance, and limited English proficiency allowance for the school district. The department shall allow the district to increase its general fund expenditures by such amount for school fiscal year 2008-09.

(10) For school fiscal year 2009-10 and each school fiscal year thereafter, a Class II, III, IV, or V district may exceed its applicable allowable growth rate by a specific dollar amount if the sum of the poverty allowance, elementary class size allowance, focus school and program allowance, and limited English proficiency allowance for the school district has grown at a rate higher than the applicable allowable growth rate of the district. The department shall compute the amount by which the district may exceed the applicable allowable growth rate by subtracting the product of the sum of the poverty allowance, elementary class size allowance, focus school and program allowance, and limited English proficiency allowance for the immediately preceding school fiscal year multiplied by the sum of one plus the applicable allowable growth rate to be exceeded from the sum of the poverty allowance, elementary class size allowance, focus school and program allowance, and limited English proficiency allowance for the district for the school fiscal year for which the applicable allowable growth rate would be exceeded. The department shall allow the district to increase its general fund expenditures by such amount for the applicable school fiscal year.

(11) A Class II, III, IV, or V school district may exceed its applicable allowable growth rate by a specific dollar amount not to exceed the amount received during such school fiscal year from educational entities as defined in section 79-1201.01 for providing distance education courses through the Distance Education Council until July 1, 2008, and the Educational Service Unit Coordinating Council on and after July 1, 2008, to such educational entities.

(12) A Class II, III, IV, or V school district may exceed its applicable allowable growth rate for school fiscal year 2007-08 by a specific dollar amount equal to the amount paid in school fiscal year 2006-07 to any distance education consortium in which the school district was participating pursuant to an interlocal agreement.

Source: Laws 1990, LB 1059, § 19; Laws 1991, LB 511, § 84; Laws 1992, LB 245, § 89; Laws 1992, LB 719, § 4; Laws 1992, LB 1063, § 205; Laws 1992, Second Spec. Sess., LB 1, § 176; Laws 1993, LB 310, § 14; Laws 1995, LB 490, § 186; Laws 1996, LB 299, § 30; R.S.Sup., 1995, § 79-3819; Laws 1996, LB 900, § 674; Laws 1996, LB 1050, § 32; Laws 1998, LB 989, § 11; Laws 1999, LB 87, § 88; Laws 1999, LB 149, § 13; Laws 2001, LB 797, § 29; Laws 2003, LB 67, § 18; Laws 2004, LB 1091, § 11; Laws 2005, LB 126, § 50; Laws 2005, LB 503, § 11; Laws 2005, LB 577, § 4; Laws 2006, LB 1024, § 90; Laws 2006, LB 1208, § 7; Referendum 2006, No. 422; Laws 2007, LB603, § 6.
Operative date September 1, 2007.

Cross Reference

Emergency Management Act, see section 81-829.36.

Retirement expenditures, not exempt from limitations, see section 79-977.

79-1031.01 Appropriations Committee; duties. The Appropriations Committee of the Legislature shall annually include the amount necessary to fund the state aid certified to school districts on or before February 15, 2007, and on or before February 1 for each ensuing school year thereafter in its recommendations to the Legislature to carry out the requirements of the Tax Equity and Educational Opportunities Support Act.

Source: Laws 1997, LB 710, § 17; Laws 1997, LB 806, § 54; Laws 1998, Spec. Sess., LB 1, § 34; Laws 1999, LB 149, § 15; Laws 2002, LB 898, § 14; Laws 2005, LB 126, § 51; Referendum 2006, No. 422; Laws 2007, LB21, § 6.
Effective date February 1, 2007.

(b) SCHOOL FUNDS

79-1072.03 Repealed. Referendum 2006, No. 422.

79-1072.04 Repealed. Referendum 2006, No. 422.

(c) SCHOOL TAXATION

79-1073 General fund property tax receipts; learning community coordinating council; certification; division; distribution. On or before October 1 for each year, each learning community coordinating council shall determine the expected amounts to be distributed to each member school district from general fund property tax receipts pursuant to subdivision (2)(b) of section 77-3442 and shall certify such amounts to each member school district and the State Department of Education. Such property tax receipts shall be divided among member school districts proportionally based on the difference of one hundred percent of the school district's formula need calculated pursuant to section 79-1007.02 minus the sum of the state aid certified pursuant to section 79-1022 and the other actual receipts included in local system formula resources pursuant to section 79-1018.01 for the school fiscal year for which the distribution is being made, except that no school district shall receive property tax receipts in excess of the lesser of such difference or the school district's property tax request submitted to the learning community coordinating council.

Each time a learning community coordinating council distributes property tax receipts to member school districts, the amount to be distributed to each district shall be proportional

based on the total amounts to be distributed to each member school district for the school fiscal year.

Source: Laws 2006, LB 1024, § 93; Laws 2007, LB641, § 29.
Effective date September 1, 2007.

79-1073.01 Learning communities; special building funds; distribution. Amounts levied by learning communities for special building funds for member school districts pursuant to subdivision (2)(g) of section 77-3442 shall be distributed to all member school districts proportionally based on the formula students used in the most recent certification of state aid pursuant to section 79-1022.

Any amounts distributed pursuant to this section shall be used by the member school districts for special building funds.

Source: Laws 2006, LB 1024, § 94; Laws 2007, LB641, § 30.
Effective date September 1, 2007.

(d) SCHOOL BUDGETS AND ACCOUNTING

79-1083.02 Class I school district; primary high school district; designation; certification. On or before February 5, 2003, and on or before February 1 of each year thereafter, the State Department of Education shall designate a primary high school district for each Class I school district for the following school fiscal year. The primary high school district shall be the one Class II, III, IV, V, or VI school district or the unified system with which the greatest share of the Class I district's assessed valuation is affiliated or of which such share is a part for the school fiscal year immediately preceding the school fiscal year for which the primary high school district determination is made. The department shall certify to all school districts and all county clerks the primary high school district for each Class I district.

Source: Laws 1997, LB 806, § 24; Laws 1998, LB 1219, § 18; Laws 1998, Spec. Sess., LB 1, § 41; Laws 1999, LB 149, § 16; Laws 1999, LB 813, § 31; Laws 2003, LB 67, § 21; Laws 2005, LB 126, § 52; Referendum 2006, No. 422.

79-1083.03 Class I school district; total allowable general fund budget of expenditures; determination; request to exceed; procedure. (1)(a) If the primary high school district designated pursuant to section 79-1083.02 is a Class VI district, the Class I district's total allowable general fund budget of expenditures minus the special education budget of expenditures shall be determined by the school board of such Class VI district and shall be certified to the Class I district on or before June 24, 2003, and on or before March 1 each year thereafter for the following school fiscal year.

(b) The Class VI primary high school district shall certify the total allowable general fund budget of expenditures minus the special education budget of expenditures for the Class I district to the State Department of Education on or before August 1, 2003, and on or before April 20 each year thereafter.

(2) If the primary high school district is not a Class VI district, the Class I district's total allowable general fund budget of expenditures minus the special education budget of expenditures shall be determined by the department as follows and certified on or before June 15, 2003, and on or before February 1 each year thereafter, for the following school fiscal year:

(a) The total allowable general fund budget of expenditures minus the special education budget of expenditures for the Class I district in the school fiscal year immediately preceding the school fiscal year for which the budget is prepared shall be divided by the formula students in the Class I district as defined in section 79-1003, and the result shall be increased by the applicable allowable growth rate for the primary high school district's local system for the ensuing school fiscal year calculated pursuant to section 79-1026 as determined on or before June 15, 2003, and on or before February 1 each year thereafter, of the school fiscal year immediately preceding the school fiscal year for which the budget is prepared;

(b) The total allowable general fund budget of expenditures minus the special education budget of expenditures for the primary high school district in the school fiscal year immediately preceding the school fiscal year for which the budget is prepared shall be divided by the formula students as defined in section 79-1003 in the primary high school district weighted by the grade weighting factors contained in subdivision (1)(a) of section 79-1007.01, and the result shall be multiplied by the kindergarten through grade eight formula students as defined in section 79-1003 weighted by the grade weighting factors contained in subdivision (1)(a) of section 79-1007.01 to calculate the total allowable general fund budget of expenditures minus the special education budget of expenditures for kindergarten through grade eight in the primary high school district. The total allowable general fund budget of expenditures minus the special education budget of expenditures for kindergarten through grade eight shall be divided by the kindergarten through grade eight formula students without weighting. The result shall be increased by the applicable allowable growth rate for the primary high school district's local system for the ensuing school fiscal year calculated pursuant to section 79-1026 as determined on or before June 15, 2003, and on or before February 1 each year thereafter, of the school fiscal year immediately preceding the school fiscal year for which the budget is prepared;

(c) The amounts calculated in subdivisions (2)(a) and (2)(b) of this section shall be summed and the result divided by two to arrive at the total allowable general fund budget of expenditures minus the special education budget of expenditures per formula student for the Class I district; and

(d) The total allowable general fund budget of expenditures minus the special education budget of expenditures per formula student for the Class I district shall be multiplied by the formula students as defined in section 79-1003 for the Class I district as used by the department for certification of the ensuing school fiscal year's state aid, and the result shall be the total allowable general fund budget of expenditures minus the special education budget of expenditures for the Class I district for the ensuing school fiscal year except as provided in subsection (3) of this section.

(3)(a) The school board of the Class I district may, on or before July 1, 2003, and on or before March 10 each year thereafter, submit a request to exceed the total allowable general fund budget of expenditures minus the special education budget of expenditures to all the school boards of the high school district or districts with which the Class I district is affiliated or of which it is a part. For Class I districts to exceed the total allowable general fund budget of expenditures minus the special education budget of expenditures, the total general fund budget of expenditures request shall be approved by high school districts, including the primary high school district, such that the portions of the Class I district that are affiliated with or part of the approving high school districts comprise at least two-thirds of the assessed valuation of the Class I district. Such request shall specify the total general fund budget of expenditures, broken down by expenditures for special education, for regular education, and for special grant funds as defined in section 79-1003, for which the Class I district seeks authority.

(b) The high school district shall approve or deny the request on or before July 15, 2003, and on or before April 10 each year thereafter following the receipt of such request and shall forward written notification to the Class I district of approval or denial. A request for additional budget authority shall be considered approved if (i) no action is taken by the high school district or (ii) the high school district fails to send written notification to the Class I district of the denial of a request for additional budget authority.

(4) The school board of a Class I district may, after October 15 of each year, amend the general fund budget of expenditures (a) by increasing the special education budget of expenditures, (b) for any special grant funds as defined in section 79-1003 received any time during a school fiscal year, or (c) for current fiscal year expenditures the board deems essential if the expenditures could not reasonably have been anticipated at the time the budget for the current year was adopted. A copy of the revised budget shall be filed pursuant to subsection (4) of section 13-511 and section 79-1024.

(5) All Class I districts shall certify the items required by subsection (1) of section 13-508 to all of their high school districts on or before August 1.

(6) All primary high school districts shall certify to the department and all other affected districts, on or before August 1, 2003, and on or before April 20 each year thereafter, the approved total general fund budget of expenditures for a Class I district when the Class I district has requested to exceed its certified budget authority and the request has been approved.

Source: Laws 1997, LB 806, § 25; Laws 1998, LB 989, § 14; Laws 1998, Spec. Sess., LB 1, § 42; Laws 1999, LB 149, § 17; Laws 1999, LB 813, § 32; Laws 2001, LB 797, § 39; Laws 2003, LB 67, § 22; Laws 2003, LB 540, § 9; Laws 2005, LB 126, § 53; Referendum 2006, No. 422.

(e) SITE AND FACILITIES ACQUISITION, MAINTENANCE, AND DISPOSITION

79-10,120 Class II, III, IV, V, or VI school district; board of education; special fund for sites and buildings; levy of taxes. The school board or board of education of a Class II, III, IV, V, or VI school district may establish a special fund for purposes of acquiring sites for school buildings or teacherages, purchasing existing buildings for use as school buildings or teacherages, including the sites upon which such buildings are located, and the erection,

alteration, equipping, and furnishing of school buildings or teacherages and additions to school buildings for elementary and high school grades and for no other purpose. For school districts that are not members of learning communities, the fund shall be established from the proceeds of an annual levy, to be determined by the board, of not to exceed fourteen cents on each one hundred dollars upon the taxable value of all taxable property in the district which shall be in addition to any other taxes authorized to be levied for school purposes. Such tax shall be levied and collected as are other taxes for school purposes. For school districts that are members of a learning community, such fund shall be established from the proceeds of the learning community special building funds levy directed to the school district for such purpose pursuant to subdivision (2)(g) of section 77-3442 and the proceeds of any school district special building fund levy pursuant to subdivision (2)(c) of section 77-3442.

Source: Laws 1963, c. 462, § 1, p. 1490; R.R.S.1943, § 79-811; Laws 1969, c. 49, § 4, p. 268; Laws 1979, LB 187, § 237; R.S.1943, (1987), § 79-548.01; Laws 1991, LB 511, § 53; Laws 1992, LB 245, § 54; Laws 1992, LB 719A, § 190; R.S.1943, (1994), § 79-547.04; Laws 1996, LB 900, § 766; Laws 2006, LB 1024, § 100; Laws 2007, LB641, § 31.
Effective date September 1, 2007.

79-10,126.01 Class V school district member of learning community; school tax; additional levy; funds established. A Class V school district that is a member of a learning community shall establish (1) for the general operation of the schools, such fund as will result from distributions pursuant to section 79-1073 from the learning community levy and any annual levy of such rate of tax upon the taxable value of all the taxable property in such school district as the board of education determines to be necessary for such purpose and as authorized pursuant to subdivision (2)(c) of section 77-3442, (2) for the purpose of acquiring sites of school buildings and the erection, alteration, equipping, and furnishing of school buildings and additions to school buildings, a fund as will result from distributions from the learning community levy pursuant to section 79-1073.01 and any annual levy of such rate of tax upon the taxable value of all the taxable property in such school district as the school board determines to be necessary for such purpose and as authorized pursuant to subdivision (2)(c) of section 77-3442, which fund shall be used for no other purposes, and (3) a further fund resulting from an annual amount of tax to be determined by the board of education to pay interest on and for retiring, funding, or servicing of bonded indebtedness of the district.

Source: Laws 2006, LB 1024, § 102; Laws 2007, LB641, § 32.
Effective date September 1, 2007.

(f) SCHOOL BREAKFAST PROGRAM

79-10,138 Program qualifications; reimbursement. The State Department of Education shall reimburse each qualified public school in Nebraska a portion of the cost of such school's school breakfast program in the amount of five cents per school breakfast served by such school in the second preceding school year. To qualify, a school district shall operate a school lunch program and shall submit information regarding the number of breakfasts served

in a manner prescribed by the department. The Legislature shall appropriate money from the General Fund to carry out this section.

Source: Laws 2000, LB 26, § 2; Laws 2003, LB 796, § 1; Laws 2007, LB73, § 1.
Operative date July 1, 2007.

ARTICLE 11

SPECIAL POPULATIONS AND SERVICES

(a) EARLY CHILDHOOD EDUCATION

Section.

- 79-1102. Early Childhood Training Center; established; purpose; duties; statewide training program; established; transfer of employees from educational service unit; how treated.
- 79-1103. Early Childhood Education Grant Program; established; administration; priorities; programs; requirements; report; endowment agreement; effect.
- 79-1104.04. Board of trustees; members; terms; expenses.

(k) HIGH-NEEDS EDUCATION COORDINATOR

- 79-11,150. Student achievement coordinator; appointment; qualifications; duties.

(l) SPECIAL EDUCATION SERVICES TASK FORCE

- 79-11,151. Special Education Services Task Force; created; members.
- 79-11,152. Special Education Services Task Force; chairperson; meetings; expenses; research and administrative support.
- 79-11,153. Special Education Services Task Force; duties.
- 79-11,154. Special Education Services Task Force; termination.

(a) EARLY CHILDHOOD EDUCATION

79-1102 Early Childhood Training Center; established; purpose; duties; statewide training program; established; transfer of employees from educational service unit; how treated. (1) On September 1, 2007, an Early Childhood Training Center shall be established within the State Department of Education. The purpose of the center is to train individuals who provide education and development activities for infants and young children and their parents. The center, taking into consideration existing public and private training efforts, shall provide support and assistance to schools and public and private providers of early childhood education services in developing training programs for staff. The center, taking into consideration existing public and private training efforts, shall also provide clearinghouse information and publications on available early childhood education training opportunities throughout the state.

(2) The center shall establish a statewide training program to support the development of parent education programs in local communities. The goal of this project is to train individuals who will be able to work with public and private providers of early childhood services to establish parent education programs in their communities.

(3) Effective September 1, 2007, the department shall assume the direct responsibility for all operations of the Early Childhood Training Center operated under the jurisdiction of the department by an educational service unit prior to September 1, 2007.

(4) Any employees of an educational service unit which operated the Early Childhood Training Center prior to September 1, 2007, who separate from employment with the educational service unit effective August 31, 2007, to become employees of the department on September 1, 2007, shall be subject to the following provisions:

(a) The educational service unit shall transfer to the department all accrued sick leave of each transferred employee and up to a maximum of two hundred eighty accrued vacation leave hours of each transferred employee;

(b) The educational service unit shall not be required to reimburse the department for any of the value of the accrued sick or vacation leave hours transferred; and

(c) For purposes of establishing seniority and rates for earning sick and vacation leave, such employees shall have a service date with the department beginning September 1, 2007. Any employee who returns to employment with the department after a break in service of less than five calendar years shall have his or her prior service recognized and the beginning service date adjusted accordingly for the period of absence.

Source: Laws 1990, LB 567, § 2; R.S.1943, (1994), § 79-3702; Laws 1996, LB 900, § 784; Laws 2007, LB231, § 1.
Effective date September 1, 2007.

79-1103 Early Childhood Education Grant Program; established; administration; priorities; programs; requirements; report; endowment agreement; effect. (1)(a) The State Department of Education shall establish and administer the Early Childhood Education Grant Program. Upon the effective date of an endowment agreement, administration of the Early Childhood Education Grant Program with respect to programs for children from birth to age three shall transfer to the board of trustees. If there is no endowment agreement in effect, the department shall request proposals in accordance with this section for all early childhood education programs from school districts, individually or in cooperation with other school districts or educational service units, working in cooperation with existing nonpublic programs which meet the requirements of subsection (2) of section 79-1104. If there is an endowment agreement in effect, the board of trustees shall administer the Early Childhood Education Grant Program with respect to programs for children from birth to age three pursuant to section 79-1104.02 and the department shall continue to administer the Early Childhood Education Grant Program with respect to other prekindergarten programs pursuant to sections 79-1101 to 79-1104.05. All administrative procedures of the board of trustees, including, but not limited to, rules, grant applications, and funding mechanisms, shall harmonize with those established by the department for other prekindergarten programs.

(b) The first priority shall be for (i) continuation grants for programs that received grants in the prior school fiscal year and for which the state aid calculation pursuant to the Tax Equity and Educational Opportunities Support Act does not include early childhood education

students, in an amount equal to the amount of such grant, except that if the grant was a first-year grant the amount shall be reduced by thirty-three percent, (ii) continuation grants for programs for which the state aid calculation pursuant to the act includes early childhood education students, in an amount equal to the amount of the grant for the school fiscal year prior to the first school fiscal year for which early childhood education students were included in the state aid calculation for the school district's local system minus the calculated state aid amount, and (iii) for school fiscal year 2007-08, continuation grants for programs for which the state aid calculation pursuant to the act includes early childhood education students, but such state aid calculation does not result in the school district receiving any equalization aid, in an amount equal to the amount of the grant received in school fiscal year 2006-07. The calculated state aid amount shall be calculated by multiplying the cost grouping cost per student for the school district's local system cost grouping by the adjusted formula students attributed to the early childhood education programs pursuant to the Tax Equity and Educational Opportunities Support Act.

(c) The second priority shall be for new grants and expansion grants for programs that will serve at-risk children who will be eligible to attend kindergarten the following school year. New grants may be given for up to three years in an amount up to one-half of the total budget of the program per year. Expansion grants may be given for one year in an amount up to one-half of the budget for expanding the capacity of the program to serve additional children.

(d) The third priority shall be for new grants, expansion grants, and continuation grants for programs serving children younger than those who will be eligible to attend kindergarten the following school year. New grants may be given for up to three years in an amount up to one-half the total budget of the program per year. Expansion grants may be given for one year in an amount up to one-half the budget for expanding the capacity of the program to serve additional children. Continuation grants under this priority may be given annually in an amount up to one-half the total budget of the program per year minus any continuation grants received under the first priority.

(e) Programs serving children who will be eligible to attend kindergarten the following school year shall be accounted for separately for grant purposes from programs serving younger children, but the two types of programs may be combined within the same classroom to serve multi-age children. Programs that receive grants for school fiscal years prior to school fiscal year 2005-06 to serve both children who will be eligible to attend kindergarten the following school year and younger children shall account for the two types of programs separately for grant purposes beginning with school year 2005-06 and shall be deemed to have received grants prior to school fiscal year 2005-06 for each year that grants were received for the types of programs representing the age groups of the children served.

(2) Each program proposal which is approved by the department shall include (a) a planning period, (b) an agreement to participate in periodic evaluations of the program to be specified by the department, (c) evidence that the program will be coordinated or contracted with existing programs, including those listed in subdivision (d) of this subsection and nonpublic programs which meet the requirements of subsection (2) of section 79-1104,

(d) a plan to coordinate and use a combination of local, state, and federal funding sources, including, but not limited to, programs for children with disabilities below five years of age funded through the Special Education Act, the Early Intervention Act, funds available through the flexible funding provisions under the Special Education Act, the federal Head Start program, 42 U.S.C. 9831 et seq., the federal Even Start Family Literacy Program, 20 U.S.C. 6361 et seq., Title I of the federal Improving America's Schools Act of 1994, 20 U.S.C. 6301 et seq., and child care assistance through the Department of Health and Human Services, (e) a plan to use sliding fee scales and the funding sources included in subdivision (d) of this subsection to maximize the participation of economically and categorically diverse groups and to ensure that participating children and families have access to comprehensive services, (f) the establishment of an advisory body which includes families and community members, (g) the utilization of appropriately qualified staff, (h) an appropriate child-to-staff ratio, (i) appropriate group size, (j) compliance with minimum health and safety standards, (k) appropriate facility size and equipment, (l) a strong family development and support component recognizing the central role of parents in their children's development, (m) developmentally and culturally appropriate curriculum, practices, and assessment, (n) sensitivity to the economic and logistical needs and circumstances of families in the provision of services, (o) integration of children of diverse social and economic characteristics, (p) a sound evaluation component, including at least one objective measure of child performance and progress, (q) continuity with programs in kindergarten and elementary grades, (r) instructional hours that are similar to or less than the instructional hours for kindergarten, (s) well-defined language development and early literacy emphasis, including the involvement of parents in family literacy activities, (t) a plan for ongoing professional development of staff, and (u) inclusion of children with disabilities as defined in the Special Education Act, all as specified by rules and regulations of the department in accordance with sound early childhood educational practice.

(3) The department shall make an effort to fund programs widely distributed across the state in both rural and urban areas.

(4) A report evaluating the programs shall be made to the State Board of Education and the Legislature by January 1 of each odd-numbered year. Up to five percent of the total appropriation for the Early Childhood Education Grant Program may be reserved by the department for evaluation and technical assistance for the programs.

(5) Programs may be approved for purposes of the Tax Equity and Educational Opportunities Support Act, expansion grants, and continuation grants on the submission of a continuation plan demonstrating that the program will continue to meet the requirements of subsection (2) of this section and a proposed operating budget demonstrating that the program will continue to receive resources from other sources equal to or greater than the sum of any grant received pursuant to this section for the prior school year plus any calculated state aid as calculated pursuant to subsection (1) of this section for the prior school year.

(6) The State Board of Education may adopt and promulgate rules and regulations to implement the Early Childhood Education Grant Program, except that if there is an endowment agreement in effect, the board of trustees shall recommend any rules and regulations relating specifically to the Early Childhood Education Grant Program with respect to programs for children from birth to age three. It is the intent of the Legislature that the rules and regulations for programs for children from birth to age three be consistent to the greatest extent possible with those established for other prekindergarten programs.

Source: Laws 1990, LB 567, § 3; Laws 1991, LB 511, § 70; Laws 1992, LB 245, § 75; Laws 1993, LB 348, § 70; R.S.1943, (1994), § 79-3703; Laws 1996, LB 900, § 785; Laws 1997, LB 346, § 8; Laws 2001, LB 759, § 2; Laws 2005, LB 577, § 5; Laws 2006, LB 1256, § 2; Laws 2007, LB603, § 7. Operative date May 31, 2007.

Cross Reference

Early Intervention Act, see section 43-2501.

Special Education Act, see section 79-1110.

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

79-1104.04 Board of trustees; members; terms; expenses. (1) The board of trustees shall include the following six members:

- (a) The Commissioner of Education or his or her designee;
- (b) The chief executive officer of the Department of Health and Human Services or his or her designee; and
- (c) The following persons appointed by the Governor, in his or her discretion:
 - (i) Two persons nominated by the endowment provider;
 - (ii) An early childhood professional representing an urban at-risk area appointed pursuant to subsection (5) of this section; and
 - (iii) An early childhood professional representing a rural at-risk county appointed pursuant to subsection (6) of this section.

(2) The terms of office for members initially appointed under subsection (1) of this section shall be three years. Upon completion of the initial terms of such members, the Governor shall appoint the two members under subdivision (1)(c)(i) of this section for terms of one and two years, the member under subdivision (1)(c)(ii) of this section for a term of three years, and the member under subdivision (1)(c)(iii) of this section for a term of two years. Succeeding appointees shall be appointed for terms of three years. An appointee to a vacancy occurring from an unexpired term shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed and qualified.

(3) The board of trustees shall by majority vote annually elect a chairperson from among the members of the board of trustees.

(4) The members of the board of trustees shall be reimbursed for their actual and necessary expenses incurred while engaged in the performance of their official duties as provided in sections 81-1174 to 81-1177.

(5) The Governor shall identify an at-risk urban area consisting of not less than ten contiguous census tracts, as determined by the United States Bureau of the Census for the

2000 United States Census, within a city of the metropolitan class, which each contain a percentage of families below the poverty line of greater than twenty percent, as reported by the United States Bureau of the Census for the 2000 United States Census. The Governor shall request that a committee, consisting of (a) the member of the Legislature representing the district containing the preponderance of geographic area of such at-risk area, (b) the member of the board of county commissioners representing the district containing the preponderance of geographic area of such at-risk area, and (c) the member of the city council representing the district containing the preponderance of geographic area of such at-risk area, develop a list of not less than two and not more than four nominees for appointment to the board of trustees. Upon receipt of a list of nominees signed by at least two members of the committee, the Governor shall, in his or her discretion, appoint a member to the board of trustees from such list of nominees.

(6) The Governor shall, in his or her discretion, appoint one member to the board of trustees who resides in a county which does not contain a city of the metropolitan class or a city of the primary class and which contains a percentage of families below the poverty line of greater than eight and one-half percent, as reported by the United States Bureau of the Census for the 2000 United States Census.

Source: Laws 2006, LB 1256, § 7; Laws 2007, LB296, § 713.
Operative date July 1, 2007.

(k) HIGH-NEEDS EDUCATION COORDINATOR

79-11,150 Student achievement coordinator; appointment; qualifications; duties. The Commissioner of Education shall appoint a student achievement coordinator, subject to confirmation by a majority vote of the members of the State Board of Education. The appointment shall be made on the basis of recognized and demonstrated background and training in instructional methods to address the unique educational needs of students in poverty, limited English proficient students, and highly mobile students. The coordinator shall evaluate and coordinate existing resources for effective programs for students in poverty, limited English proficient students, and highly mobile students across the state. The coordinator shall also develop a plan to improve educational attainment for such students. In developing the plan, the coordinator shall seek input from superintendents, principals, teachers, and other individuals with relevant expertise. The plan may include research efforts to be conducted by Nebraska postsecondary educational institutions. The plan shall be presented to the Education Committee of the Legislature on or before November 1, 2008.

Source: Laws 2006, LB 1024, § 112; Laws 2007, LB641, § 33.
Effective date September 1, 2007.

(l) SPECIAL EDUCATION SERVICES TASK FORCE

79-11,151 Special Education Services Task Force; created; members. The Special Education Services Task Force is created. Members of the task force shall be appointed on or before July 1, 2007, and shall include:

- (1) The chairperson of the Education Committee of the Legislature and one other member of such committee;
- (2) One member of the Legislature who is not a member of the Education Committee;
- (3) One parent who has a child receiving special education services in a private setting;
- (4) Two parents who have children receiving special education services in a school district;
- (5) Two educational service unit special education teachers;
- (6) One public school special education teacher;
- (7) One public school special education director or educational service unit special education director;
- (8) One private school principal or director;
- (9) One school board member;
- (10) One representative of the State Department of Education who has expertise in special education;
- (11) One representative of the Department of Health and Human Services who has expertise in the placement of state wards; and
- (12) One representative of a private provider of special education services.

The members listed in subdivisions (1) and (2) of this section shall be appointed by the Executive Board of the Legislative Council. The member listed in subdivision (10) of this section shall be appointed by the Commissioner of Education. All other members shall be appointed by the Governor.

Source: Laws 2007, LB316, § 1.
Effective date May 31, 2007.

79-11,152 Special Education Services Task Force; chairperson; meetings; expenses; research and administrative support. The chairperson of the Education Committee of the Legislature shall be the chairperson of the Special Education Services Task Force and shall call the initial and subsequent meetings of the task force. Members of the task force shall be reimbursed for their actual and necessary expenses incurred in carrying out their duties as members of the task force as provided in sections 81-1174 to 81-1177. The Education Committee of the Legislature, the Legislative Fiscal Analyst, and the State Department of Education shall provide research and administrative support for the task force. For budgetary purposes only, the task force shall be within the Legislative Council.

Source: Laws 2007, LB316, § 2.
Effective date May 31, 2007.

79-11,153 Special Education Services Task Force; duties. The Special Education Services Task Force shall examine the provision of special education services in Nebraska. The task force shall make recommendations for policies and potential legislation to the Clerk

of the Legislature and the Education Committee of the Legislature on or before December 31, 2007. The examination of special education services shall include, but not be limited to:

- (1) Applicable federal and state laws;
 - (2) The provision of special education services in other states;
 - (3) Application of the least-restrictive-environment doctrine;
 - (4) The availability of special education services across the state;
 - (5) The use of private providers of special education services by public school districts;
 - (6) The use of private providers of special education services by private citizens; and
 - (7) The provision of special education services for wards of the state or wards of the court.
- The task force may hold one or more public hearings to obtain input.

Source: Laws 2007, LB316, § 3.
Effective date May 31, 2007.

79-11,154 Special Education Services Task Force; termination. The Special Education Services Task Force terminates on December 31, 2007.

Source: Laws 2007, LB316, § 4.
Effective date May 31, 2007.

ARTICLE 12

EDUCATIONAL SERVICE UNITS ACT

Section.

- 79-1201. Act, how cited.
- 79-1201.01. Terms, defined.
- 79-1204. Role and mission.
- 79-1205. Annual adjustment to boundaries; State Board of Education; duties.
- 79-1208. Boundary change; petition; contents.
- 79-1211. Petition; hearing; approval or rejection; effect.
- 79-1212. Reorganized units; board members.
- 79-1217. Governing board; name; members; election; qualification; vacancy; expenses; membership.
- 79-1217.01. Educational service unit board; establish election districts.
- 79-1223. Educational service units; real estate; personal property; services; purchase; lease; bids.
- 79-1233. Access to telecomputing resources; powers and duties.
- 79-1241. Core services; distribution of funds for fiscal years prior to FY2008-09.
- 79-1241.01. Core services; technology infrastructure; appropriation; legislative intent.
- 79-1241.02. Core services; technology infrastructure; review required.
- 79-1241.03. Distribution of funds for school fiscal year 2008-09 and subsequent school years; certification by department; distribution.
- 79-1243. Technology infrastructure; appropriation; distribution for fiscal years prior to FY2008-09.
- 79-1245. Educational Service Unit Coordinating Council; created; composition; funding.

- 79-1246. Educational Service Unit Coordinating Council; duties; Open Meetings Act applicable.
- 79-1247. Educational Service Unit Coordinating Council; appoint distance education director; council director authorized; salaries; expenses; duties; other appointments authorized.
- 79-1248. Educational Service Unit Coordinating Council; powers and duties.
- 79-1249. Educational Service Unit Coordinating Council; assistance provided; limitations.

79-1201 Act, how cited. Sections 79-1201 to 79-1249 shall be known and may be cited as the Educational Service Units Act.

Source: Laws 1996, LB 900, § 918; Laws 1998, LB 1110, § 1; Laws 1999, LB 386, § 2; Laws 2002, Second Spec. Sess., LB 5, § 2; Laws 2007, LB603, § 8.
Operative date May 31, 2007.

79-1201.01 Terms, defined. For purposes of the Educational Service Units Act and sections 79-1336 and 79-1337:

(1) Distance education course means a course with at least one student in any of grades kindergarten through twelve who is in a different location than the teacher and taught by a teacher employed by an educational entity utilizing either two-way interactive video or the Internet without two-way interactive video. Distance education course includes a dual-enrollment course with at least one student who is in a different location than the teacher and taught by a teacher employed by an educational entity utilizing either two-way interactive video or the Internet without two-way interactive video;

(2) Dual-enrollment course means a course taught to students for credit at both a high school and a postsecondary educational institution;

(3) Educational entity means a school district, a private, denominational, or parochial school, an educational service unit, a community college, a state college, the University of Nebraska, or a nonprofit private postsecondary educational institution;

(4) Elementary distance education course means a distance education course which is delivered utilizing two-way interactive video to students who are enrolled in any of grades kindergarten through eight;

(5) Network Nebraska means the network created pursuant to section 86-5,100;

(6) Qualified distance education course means a distance education course which meets any applicable rules and regulations of the State Department of Education, is offered for one semester of high school credit or the equivalent, and for which all of the participating educational entities are required to have access to Network Nebraska;

(7) Technical training means training to equip educators with knowledge about the skills and tools necessary to infuse technological resources and software applications into the curriculum to be used in classrooms with and by students and includes, but is not limited to, computer workstation troubleshooting, distance education, educational software, Internet resources, local area network management, multimedia presentation tools, and strategic planning;

(8) Technology includes technical training and technology infrastructure;

(9) Technology infrastructure means hardware-related items necessary for schools to interact electronically throughout the state, including, but not limited to, physical connections, wiring, servers, routers, switches, domain name service, and operating systems and human resources necessary to maintain infrastructure, including, but not limited to, systems engineers, programmers, webmasters, and help desk staff; and

(10) Two-way interactive video distance education course means a distance education course in which a teacher delivers instruction to students in a different location than the teacher using two-way interactive video on at least two different days per week during the course.

Source: Laws 1999, LB 386, § 3; Laws 2007, LB603, § 9.
Operative date September 1, 2007.

79-1204 Role and mission. (1) The role and mission of the educational service units is to serve as educational service providers in the state's system of elementary and secondary education.

(2) Educational service units shall:

(a) Act primarily as service agencies in providing core services and services identified and requested by member school districts;

(b) Provide for economy, efficiency, and cost-effectiveness in the cooperative delivery of educational services;

(c) Provide educational services through leadership, research, and development in elementary and secondary education;

(d) Act in a cooperative and supportive role with the State Department of Education and school districts in development and implementation of long-range plans, strategies, and goals for the enhancement of educational opportunities in elementary and secondary education; and

(e) Serve, when appropriate and as funds become available, as a repository, clearinghouse, and administrator of federal, state, and private funds on behalf of school districts which choose to participate in special programs, projects, or grants in order to enhance the quality of education in Nebraska schools.

(3) Except as provided in section 79-1241, core services shall be provided by educational service units to all member school districts. Core services shall be defined by each educational service unit as follows:

(a) Core services shall be within the following service areas in order of priority: (i) Staff development which shall include access to staff development related to improving the achievement of students in poverty and students with diverse backgrounds; (ii) technology, including distance education services; and (iii) instructional materials services;

(b) Core services shall improve teaching and student learning by focusing on enhancing school improvement efforts, meeting statewide requirements, and achieving statewide goals in the state's system of elementary and secondary education;

(c) Core services shall provide schools with access to services that:

- (i) The educational service unit and its member school districts have identified as necessary services;
- (ii) Are difficult, if not impossible, for most individual school districts to effectively and efficiently provide with their own personnel and financial resources;
- (iii) Can be efficiently provided by each educational service unit to its member school districts; and
- (iv) Can be adequately funded to ensure that the service is provided equitably to the state's public school districts;
- (d) Core services shall be designed so that the effectiveness and efficiency of the service can be evaluated on a statewide basis; and
- (e) Core services shall be provided by the educational service unit in a manner that minimizes the costs of administration or service delivery to member school districts.
- (4) Educational service units shall meet minimum accreditation standards set by the State Board of Education that will:
 - (a) Provide for accountability to taxpayers;
 - (b) Assure that educational service units are assisting and cooperating with school districts to provide for equitable and adequate educational opportunities statewide; and
 - (c) Assure a level of quality in educational programs and services provided to school districts by the educational service units.
- (5) Educational service units may contract to provide services to:
 - (a) Nonmember public school districts;
 - (b) Nonpublic school systems;
 - (c) Other educational service units; and
 - (d) Other political subdivisions, under the Interlocal Cooperation Act and the Joint Public Agency Act.
- (6) Educational service units shall not regulate school districts unless specifically provided pursuant to another section of law.

Source: Laws 1987, LB 688, § 1; R.S.1943, (1994), § 79-2201.02; Laws 1996, LB 900, § 921; Laws 1997, LB 806, § 57; Laws 1999, LB 87, § 89; Laws 2006, LB 1208, § 8; Laws 2007, LB641, § 34. Effective date September 1, 2007.

Cross Reference

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

79-1205 Annual adjustment to boundaries; State Board of Education; duties. On or before July 31, 2007, and on or before July 31 of each year thereafter, the State Board of Education shall adjust the boundaries of any educational service unit the boundaries of which do not align with the boundaries of the member school districts on July 1 of such year. Such boundary adjustments shall align the boundaries of the educational service unit with the boundaries of the member school districts as the boundaries of the member school districts existed on July 1 of such year. Such boundary adjustments shall be referred to the appropriate county and educational service unit officials, and such officials shall implement

the adjustments and make the necessary changes in the educational service unit maps and tax records.

Source: Laws 2007, LB603, § 10.
Operative date May 31, 2007.

79-1208 Boundary change; petition; contents. Petitions to the State Board of Education to change educational service unit boundaries shall include a description of the proposed boundaries and shall be accompanied by a plan of reorganization which shall include (1) a summary of the reasons for the proposed reorganization, (2) a plan for the provision of services to school districts affected by any reorganization plan, (3) when a petition proposes the dissolution of an entire educational service unit or units for attachment to an existing educational service unit or for the merger of two or more educational service units into a new educational service unit, a summary of the terms on which such reorganization is made, including provision for the utilization of existing facilities, equipment, and materials and provision for the disposition of assets and any unbonded indebtedness of affected educational service units, (4) when a petition deals with the attachment of new territory to an existing educational service unit, verification of approval by majority vote of the receiving educational service unit governing board, and (5) a plan for the establishment of new election districts as required under section 79-1217.

Source: Laws 1987, LB 688, § 4; Laws 1990, LB 486, § 2; R.S.1943, (1994), § 79-2202.05; Laws 1996, LB 900, § 925; Laws 2007, LB603, § 11.
Operative date September 1, 2007.

79-1211 Petition; hearing; approval or rejection; effect. The State Board of Education, within ninety days after the receipt of any petition described in section 79-1208, shall hold a public hearing on the proposed reorganization plan. At the board's option, it may appoint a hearing officer to conduct the public hearing and issue a summary of the evidence presented. The board may also direct the appointed hearing officer to recommend a decision to the board, which recommendation shall not be binding on the board. Within one hundred twenty days after the receipt of such petition, the board shall approve or reject such petition. If the board rejects the petition, it shall clearly state its reasons for such rejection. Approved petitions for reorganization of educational service unit boundaries shall be referred to the appropriate county and educational service unit officials to implement the plan and to make the necessary changes in the educational service unit maps and tax records.

Source: Laws 1987, LB 688, § 7; Laws 1990, LB 486, § 3; R.S.1943, (1994), § 79-2202.08; Laws 1996, LB 900, § 928; Laws 2007, LB603, § 12.
Operative date May 31, 2007.

79-1212 Reorganized units; board members. Members of boards of educational service units existing prior to approval of any plan of reorganization shall serve as board members of educational service units which are reorganized pursuant to sections 79-1206 to 79-1211 until the expiration of their original terms. Such persons shall be members of the

board of the reorganized educational service unit in which they reside. Within thirty days after approval of any plan of reorganization by the State Board of Education, the Commissioner of Education shall call a meeting of board members of each educational service unit being reorganized pursuant to sections 79-1206 to 79-1211. At such meeting, members of each such board shall appoint one member from each election district to be created pursuant to the plan of reorganization not having representation on such board to serve until the next general election. The board shall take all necessary action to prepare for operation of the reorganized educational service unit commencing one year following approval of any plan of reorganization by the State Board of Education. Expenses incurred by such board prior to such times shall be prorated between the counties comprising the educational service unit on the basis of the assessed valuation of such counties.

Source: Laws 1969, c. 746, § 3, p. 2810; Laws 1987, LB 688, § 18; R.S.1943, (1994), § 79-2203.02; Laws 1996, LB 900, § 929; Laws 1998, Spec. Sess., LB 1, § 51; Laws 2007, LB603, § 13.
Operative date September 1, 2007.

79-1217 Governing board; name; members; election; qualification; vacancy; expenses; membership. (1) All educational service units shall be governed by a board to be known as the Board of Educational Service Unit No. Until the first Thursday after the first Tuesday in January 2009, the educational service unit board, except the board of an educational service unit with only one member school district, shall be composed of one member from each county and four members at large, all of whom shall reside within the geographical boundaries of the educational service unit, but no more than two of the members at large shall be appointed or elected from the same county unless any one county within the educational service unit has a population in excess of one hundred fifty thousand inhabitants or the educational service unit consists of only one county. Beginning on the first Thursday after the first Tuesday in January 2009, the educational service unit board, except the board of an educational service unit with only one member school district, shall be composed of one member elected to represent each election district established pursuant to section 79-1217.01. Successors to the members initially appointed pursuant to section 79-1212 shall be elected pursuant to section 32-515.

(2) Vacancies in office shall occur as set forth in section 32-560 except as otherwise provided in section 79-1212 regarding the requirement to live in the district represented. Whenever any vacancy occurs on the board, the remaining members of such board shall appoint an individual residing within the election district of the educational service unit for which the vacancy exists and meeting the qualifications for the office to fill such vacancy for the balance of the unexpired term.

(3) Members of the board shall receive no compensation for their services but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties under the Educational Service Units Act as provided in sections 81-1174 to 81-1177.

(4) Except as provided in subsection (5) of this section, any joint school district located in two or more counties shall be considered a part of the educational service unit in which the greater number of school-age children of such joint school district reside.

(5) Any Class I district which is part of a Class VI district shall be considered a part of the educational service unit of which the Class VI district is a member. If the Class VI district has removed itself from an educational service unit, each Class I district which is part of such Class VI district may continue its existing membership in an educational service unit or may change its status relative to membership in an educational service unit in accordance with section 79-1209. The patrons of a Class I district maintaining membership in an educational service unit pursuant to this subsection shall have the same rights and privileges as other patrons of the educational service unit, and the taxable valuation of the taxable property within the geographic boundaries of such Class I district shall be subject to the educational service unit's tax levy established pursuant to section 79-1225.

(6) The administrator of each educational service unit, prior to July 1 of each year in which a statewide primary election is to be held, shall certify to the election commissioner or county clerk of each county located within the unit the corporate name of each school district, as described in section 79-405, located within the county. If a school district is a joint school district located in two or more counties, the administrator shall certify to each election commissioner or county clerk the educational service unit of which the school district is considered to be a part.

(7) Educational service units with only one member school district shall be governed by the school board of such school district.

Source: Laws 1965, c. 504, § 3, p. 1608; Laws 1967, c. 560, § 1, p. 1844; Laws 1969, c. 747, § 2, p. 2818; Laws 1969, c. 746, § 8, p. 2814; Laws 1977, LB 201, § 17; Laws 1978, LB 632, § 10; Laws 1981, LB 204, § 163; Laws 1987, LB 688, § 16; Laws 1988, LB 1142, § 12; Laws 1991, LB 511, § 65; Laws 1992, LB 245, § 70; Laws 1992, LB 1063, § 200; Laws 1992, Second Spec. Sess., LB 1, § 171; Laws 1994, LB 76, § 607; R.S.1943, (1994), § 79-2203; Laws 1996, LB 900, § 934; Laws 1997, LB 345, § 47; Laws 1997, LB 347, § 47; Laws 2001, LB 797, § 49; Laws 2002, LB 647, § 2; Laws 2007, LB603, § 14.
Operative date September 1, 2007.

79-1217.01 Educational service unit board; establish election districts. By December 31, 2007, and after each decennial census pursuant to section 32-553, each educational service unit board, except boards of educational service units with only one member school district, shall divide the territory of the educational service unit into at least five and up to twelve numbered districts for the purpose of electing members to the board in compliance with section 32-553. Such districts shall be compact and contiguous and substantially equal in population. The newly established election districts shall apply beginning with the nomination and election of educational service unit board members in 2008.

Source: Laws 2007, LB603, § 15.
Operative date September 1, 2007.

79-1223 Educational service units; real estate; personal property; services; purchase; lease; bids. In order to carry out the purposes provided in section 79-1204, educational service units may purchase, lease, or lease-purchase real estate, equipment,

supplies, services, and personal property for their own use. Educational service units may, either individually or collectively, purchase, lease, lease-purchase, or act as purchase agent for administrative and instructional supplies, instructional equipment, instructional services, and personal property for resale only to educational entities. When an educational service unit advertises for bids for administrative or instructional supplies, instructional equipment, instructional services, and personal property, acceptance of any bid submitted to the educational service unit shall obligate the educational service unit to award the contract in accordance with the plans and specifications and in the quantities set forth in the bid documents.

Source: Laws 1971, LB 734, § 1; Laws 1979, LB 57, § 1; Laws 1987, LB 688, § 13; R.S.1943, (1994), § 79-2201.01; Laws 1996, LB 900, § 940; Laws 2006, LB 1208, § 9; Laws 2007, LB603, § 21.
Operative date July 1, 2008.

79-1233 Access to telecomputing resources; powers and duties. Each educational service unit shall provide access for all school districts within the geographical area served by the unit to telecomputing resources, which shall include the capacity to receive and transmit distance education courses on at least a regional basis beginning on or before August 1, 2007, through the installation of necessary equipment at each educational service unit location or through interlocal agreements with other educational service units and shall provide support for training users to meet their specific telecomputing and distance education needs. School districts may annually elect prior to a date determined by the educational service unit not to connect to such telecomputing resources. Each educational service unit shall also develop, with the State Department of Education, a plan which provides for connecting the telecomputing and distance education equipment of such school districts with the telecomputing and distance education equipment of the unit.

The leasing or purchase of and planning for telecomputing or distance education equipment and software for the educational service units shall meet the minimum standards as set by the Nebraska Information Technology Commission. The Chief Information Officer shall bid for such equipment and software and shall allow educational entities to participate in such statewide leasing or purchasing contracts. Educational service units may enter into agreements pursuant to the Interlocal Cooperation Act and the Joint Public Agency Act to carry out this section. Such agreements may include, but need not be limited to, provisions requiring any school district having telecomputing or distance education equipment connected to the educational service unit's telecomputing or distance education equipment to pay periodic fees necessary to cover the cost of such usage.

Source: Laws 1993, LB 348, § 49; Laws 1993, LB 452, § 2; Laws 1995, LB 860, § 3; R.S.Supp.,1995, § 79-2225; Laws 1996, LB 900, § 950; Laws 1999, LB 87, § 90; Laws 1999, LB 141, § 15; Laws 1999, LB 386, § 5; Laws 2006, LB 1208, § 10; Laws 2007, LB603, § 22.
Operative date July 1, 2008.

Cross Reference

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

79-1241 Core services; distribution of funds for fiscal years prior to FY2008-09. (1) For fiscal years prior to FY2008-09: Funds appropriated for core services shall be distributed proportionally to each educational service unit by the State Department of Education based on the fall membership in member districts in the preceding school fiscal year, except that no educational service unit shall receive less than two and one-half percent of the funds appropriated for core services.

(2) Any funds appropriated for distribution pursuant to this section shall be distributed in ten as nearly as possible equal payments on the first business day of each month beginning in September of each school fiscal year and ending in June. Funds distributed pursuant to this section shall be used for core services with the approval of representatives of two-thirds of the member school districts, representing a majority of the students in the member school districts. If a member school district provides evidence satisfactory to the educational service unit that the district will provide core services for itself in a cost-efficient manner, the educational service unit may distribute funds directly to the district to be used for providing core services, or if all member school districts within the boundaries of an educational service unit together provide evidence satisfactory to the State Department of Education that the districts will provide core services for themselves in a more cost-efficient manner than the educational service unit, the department shall distribute funds directly to the districts to be used for providing core services.

(3) If two or more educational service units merge, the resulting merged educational service unit shall, for each of the three fiscal years following the fiscal year in which the merger takes place, receive core services funds under this section in an amount not less than the total of the core services funds that each of the merging educational service units received in the fiscal year immediately preceding the merger, except that if the appropriation for core services funds for either of the three fiscal years following the fiscal year in which the merger takes place is less than the appropriation for such funds for the fiscal year immediately preceding the merger, core services funds shall be reduced by a percentage equal to the ratio of the difference of such appropriation for the fiscal year immediately preceding the merger minus the appropriation for the fiscal year in question divided by the appropriation for the fiscal year immediately preceding the merger. Thereafter the distribution of core services funds to the merged educational service unit shall be as provided in subsection (2) of this section.

Source: Laws 1997, LB 806, § 61; Laws 1998, LB 1110, § 2; Laws 2002, Second Spec. Sess., LB 5, § 3; Laws 2003, LB 53, § 1; Laws 2007, LB603, § 23.
Operative date September 1, 2007.

79-1241.01 Core services; technology infrastructure; appropriation; legislative intent. To carry out sections 79-1241, 79-1241.03, and 79-1243, it is the intent of the Legislature to appropriate for each fiscal year the amount appropriated in the prior year increased by the percentage growth in the fall membership of member districts plus the basic allowable growth rate described in section 79-1025. For purposes of this section, fall

membership has the same meaning as in section 79-1003. Fall membership data used to compute growth shall be from the two most recently available fall membership reports.

Source: Laws 1998, LB 1110, § 3; Laws 1999, LB 386, § 6; Laws 2006, LB 1208, § 11; Laws 2007, LB603, § 25.
Operative date September 1, 2007.

79-1241.02 Core services; technology infrastructure; review required. It is the intent of the Legislature that any funds appropriated pursuant to section 79-1241.01, 79-1241.03, or 79-1243 and used for technology-related projects or technology initiatives undertaken by an educational service unit follow the review process established in sections 86-512 to 86-524, including the review by the technical panel of the Nebraska Information Technology Commission.

Source: Laws 1998, LB 924, § 70; Laws 2001, LB 797, § 50; Laws 2002, LB 1105, § 504; Laws 2006, LB 1208, § 12; Laws 2007, LB603, § 26.
Operative date September 1, 2007.

79-1241.03 Distribution of funds for school fiscal year 2008-09 and subsequent school years; certification by department; distribution. For school fiscal year 2008-09 and each school fiscal year thereafter:

(1) One percent of the funds appropriated for core services and technology infrastructure shall be transferred to the Educational Service Unit Coordinating Council. The remainder of such funds shall be distributed pursuant to subdivisions (2) through (6) of this section;

(2)(a) The distance education and telecommunications allowance for each educational service unit shall equal eighty-five percent of the difference of the costs for telecommunications services, for access to data transmission networks that transmit data to and from the educational service unit, and for the transmission of data on such networks paid by the educational service unit as reported on the annual financial report for the most recently available complete data year minus the receipts from the federal Universal Service Fund pursuant to 47 U.S.C. 254, as such section existed on January 1, 2007, for the educational service unit as reported on the annual financial report for the most recently available complete data year and minus any receipts from school districts or other educational entities for payment of such costs as reported on the annual financial report of the educational service unit;

(b) The base allocation of each educational service unit shall equal two and one-half percent of the funds appropriated for distribution pursuant to this section;

(c) The satellite office allocation for each educational service unit shall equal one percent of the funds appropriated for distribution pursuant to this section for each office of the educational service unit, except the educational service unit headquarters, up to the maximum number of satellite offices. The maximum number of satellite offices used for the calculation of the satellite office allocation for any educational service unit shall equal the difference of the ratio of the number of square miles within the boundaries of the educational service unit divided by four thousand minus one with the result rounded to the closest whole number;

(d) The statewide adjusted valuation shall equal the total adjusted valuation for all local systems pursuant to section 79-1016 used for the calculation of state aid for school districts

pursuant to the Tax Equity and Educational Opportunities Support Act for the school fiscal year for which the distribution is being calculated pursuant to this section;

(e) The adjusted valuation for each educational service unit shall equal the total adjusted valuation of the member school districts pursuant to section 79-1016 used for the calculation of state aid for school districts pursuant to the act for the school fiscal year for which the distribution is being calculated pursuant to this section;

(f) The local effort rate shall equal \$0.0135 per one hundred dollars of adjusted valuation;

(g) Except as provided in subdivision (5) of this section, the statewide student allocation shall equal the difference of the sum of the amount appropriated for distribution pursuant to this section plus the product of the statewide adjusted valuation multiplied by the local effort rate minus the distance education and telecommunications allowance, base allocation, and satellite office allocation for all educational service units;

(h) The sparsity adjustment for each educational service unit shall equal the sum of one plus one-tenth of the ratio of the square miles within the boundaries of the educational service unit divided by the fall membership of the member school districts for the school fiscal year immediately preceding the school fiscal year for which the distribution is being calculated pursuant to this section;

(i) The adjusted students for each educational service unit shall equal the fall membership of the member school districts for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated pursuant to this section multiplied by the educational service unit sparsity adjustment;

(j) The per student allocation shall equal the statewide student allocation divided by the total adjusted students for all educational service units;

(k) The student allocation for each educational service unit shall equal the per student allocation multiplied by the adjusted students for the educational service units;

(l) The needs for each educational service unit shall equal the sum of the distance education and telecommunications allowance, base allocation, satellite office allocation, and student allocation for the educational service unit; and

(m) The distribution of core services and technology infrastructure funds for each educational service unit shall equal the needs for each educational service unit minus the product of the adjusted valuation for the educational service unit multiplied by the local effort rate;

(3) If an educational service unit is the result of a merger or received new member school districts from another educational service unit, such educational service unit shall, for each of the three fiscal years following the fiscal year in which the merger takes place or the new member school districts are received, receive core services and technology infrastructure funds pursuant to subdivisions (2) through (6) of this section in an amount not less than the core services and technology infrastructure funds received in the fiscal year immediately preceding the merger or receipt of new member school districts, except that if the total amount available to be distributed pursuant to subdivisions (2) through (6) of this section for such year

is less than the total amount distributed pursuant to such subdivisions or sections 79-1241 and 79-1243 for the immediately preceding fiscal year, the minimum core services and technology infrastructure funds for each educational service unit pursuant to this subdivision shall be reduced by a percentage equal to the ratio of the difference of the total amount distributed pursuant to subdivisions (2) through (6) of this section or sections 79-1241 and 79-1243 for the immediately preceding fiscal year minus the total amount available to be distributed pursuant to subdivisions (2) through (6) of this section for the fiscal year in question divided by the total amount distributed pursuant to subdivisions (2) through (6) of this section or sections 79-1241 and 79-1243 for the immediately preceding fiscal year. The core services and technology infrastructure funds received in the fiscal year immediately preceding a merger or receipt of new member school districts for an educational service unit shall equal the amount received in such fiscal year pursuant to subdivisions (2) through (6) of this section or sections 79-1241 and 79-1243 by any educational service unit affected by the merger or the transfer of school districts multiplied by a ratio equal to the valuation that was transferred to or retained by the educational service unit for which the minimum is being calculated divided by the total valuation of the educational service unit transferring or retaining the territory;

(4) For fiscal years 2008-09 through 2013-14, each educational service unit shall receive core services and technology infrastructure funds under this section in an amount not less than ninety-five percent of the total of the core services and technology infrastructure funds that the educational service unit received in the immediately preceding fiscal year either pursuant to subdivisions (2) through (6) of this section or pursuant to sections 79-1241 and 79-1243, except that if the total amount available to be distributed pursuant to subdivisions (2) through (6) of this section for such year is less than the total amount distributed pursuant to such subdivisions or sections 79-1241 and 79-1243 for the immediately preceding fiscal year, the minimum core services and technology infrastructure funds for each educational service unit pursuant to this subdivision shall be reduced by a percentage equal to the ratio of the difference of the total amount distributed pursuant to subdivisions (2) through (6) of this section or sections 79-1241 and 79-1243 for the immediately preceding fiscal year minus the total amount available to be distributed pursuant to subdivisions (2) through (6) of this section for the fiscal year in question divided by the total amount distributed pursuant to subdivisions (2) through (6) of this section or sections 79-1241 and 79-1243 for the immediately preceding fiscal year;

(5) If the minimum core services and technology infrastructure funds pursuant to subdivision (3) or (4) of this section for any educational service unit exceed the amount that would otherwise be distributed to such educational service unit pursuant to subdivision (2) of this section, the statewide student allocation shall be reduced such that the total amount to be distributed pursuant to this section equals the appropriation for core services and technology infrastructure funds and no educational service unit receives less than the greater of any minimum amounts calculated for such educational service unit pursuant to subdivisions (3) and (4) of this section; and

(6) The State Department of Education shall certify the distribution of core services and technology infrastructure funds pursuant to subdivisions (2) through (6) of this section to each educational service unit on or before July 1, 2008, for school fiscal year 2008-09 and on or before July 1 of each year thereafter for the following school fiscal year. Any funds appropriated for distribution pursuant to this section shall be distributed in ten as nearly as possible equal payments on the first business day of each month beginning in September of each school fiscal year and ending in June. Funds distributed pursuant to this section shall be used for core services and technology infrastructure with the approval of representatives of two-thirds of the member school districts of the educational service unit, representing a majority of the students in the member school districts.

Source: Laws 2007, LB603, § 24.
Operative date September 1, 2007.

Cross Reference

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

79-1243 Technology infrastructure; appropriation; distribution for fiscal years prior to FY2008-09. For school fiscal years prior to school fiscal year 2008-09:

(1) Funds appropriated for technology infrastructure shall be distributed proportionally to each educational service unit by the State Department of Education based on the fall membership of member districts in the preceding school fiscal year, except that no educational service unit shall receive less than the sum of (a) two and one-half percent of the funds appropriated for technology infrastructure plus (b) eighty-five percent of the difference of the costs for telecommunications services, for access to data transmission networks that transmit data to and from the educational service unit, and for the transmission of data on such networks paid by the educational service unit as reported on the annual financial report for the most recently available complete data year minus the receipts from the federal Universal Service Fund pursuant to section 254 of the Telecommunications Act of 1996, 47 U.S.C. 254, as such section existed on January 1, 2006, for the educational service unit as reported on the annual financial report for the most recently available complete data year and minus any receipts from school districts or other educational entities for payment of such costs as reported on the annual financial report of the educational service unit;

(2) Any funds appropriated for distribution pursuant to this section shall be distributed in ten as nearly as possible equal payments on the first business day of each month beginning in September of each school fiscal year and ending in June. Funds distributed pursuant to this section shall be used for technology infrastructure with the approval of representatives of two-thirds of the member school districts, representing a majority of the students in the member school districts; and

(3) If two or more educational service units merge, the resulting merged educational service unit shall, for each of the three fiscal years following the fiscal year in which the merger takes place, receive technology infrastructure funds under this section in an amount not less

than the total of the technology infrastructure funds that each of the merging educational service units received in the fiscal year immediately preceding the merger, except that if the appropriation for technology infrastructure funds for either of the three fiscal years following the fiscal year in which the merger takes place is less than the appropriation for such funds for the fiscal year immediately preceding the merger, technology infrastructure funds shall be reduced by a percentage equal to the ratio of the difference of such appropriation for the fiscal year immediately preceding the merger minus the appropriation for the fiscal year in question divided by the appropriation for the fiscal year immediately preceding the merger. Thereafter the distribution of technology infrastructure funds to the merged educational service unit shall be as provided in subdivision (1) of this section.

Source: Laws 1999, LB 386, § 7; Laws 2006, LB 1208, § 13; Laws 2007, LB603, § 27.
Operative date September 1, 2007.

79-1245 Educational Service Unit Coordinating Council; created; composition; funding. The Educational Service Unit Coordinating Council is created as of July 1, 2008. On such date the assets and liabilities of the Distance Education Council shall be transferred to the Educational Service Unit Coordinating Council. The council shall be composed of one administrator from each educational service unit. The council shall be funded from one percent of the core services and technology infrastructure funding appropriated pursuant to section 79-1241.03, appropriations by the Legislature for distance education, and fees established for services provided to educational entities.

Source: Laws 2007, LB603, § 16.
Operative date July 1, 2008.

79-1246 Educational Service Unit Coordinating Council; duties; Open Meetings Act applicable. (1) The Educational Service Unit Coordinating Council shall work toward statewide coordination to provide the most cost-effective services for the students, teachers, and school districts in each educational service unit. The council's duties include, but are not limited to:

(a) Preparation of strategic plans to assure the cost-efficient and equitable delivery of services across the state;

(b) Administration of statewide initiatives and provision of statewide services; and

(c) Coordination of distance education.

(2) All activities conducted by the council shall be conducted in accordance with the Open Meetings Act. This section does not require or provide for state control of the operations of any educational service unit or abridge the governance ability, rights, or responsibilities of any educational service unit board.

Source: Laws 2007, LB603, § 17.
Operative date July 1, 2008.

Cross Reference

Open Meetings Act, see section 84-1407.

79-1247 Educational Service Unit Coordinating Council; appoint distance education director; council director authorized; salaries; expenses; duties; other appointments authorized. The Educational Service Unit Coordinating Council shall appoint a distance education director and may appoint a council director, both of whom shall hold office at the pleasure of the council, except that the person serving as the administrator of the Distance Education Council immediately preceding July 1, 2008, shall be the initial distance education director under this section. The council director and the distance education director shall receive such salaries as the council determines and shall be reimbursed for their actual expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177.

The council director and the distance education director shall perform duties as the council directs and shall not be members of the council. The council may also appoint or retain such other persons as it may deem necessary for the performance of its functions and shall prescribe their duties, fix their compensation, and provide for reimbursement of their actual and necessary expenses as provided in sections 81-1174 to 81-1177 within the amounts available in the budget of the council.

Source: Laws 2007, LB603, § 18.
Operative date July 1, 2008.

79-1248 Educational Service Unit Coordinating Council; powers and duties. The powers and duties of the Educational Service Unit Coordinating Council include, but are not limited to:

- (1) Providing public access to lists of qualified distance education courses;
- (2) Collecting and providing school schedules for participating educational entities;
- (3) Facilitation of scheduling for qualified distance education courses;
- (4) Brokering of qualified distance education courses to be purchased by educational entities;
- (5) Assessment of distance education needs and evaluation of distance education services;
- (6) Compliance with technical standards as set forth by the Nebraska Information Technology Commission and academic standards as set forth by the State Department of Education related to distance education;
- (7) Establishment of a system for prioritizing courses if the demand for Network Nebraska exceeds the capacity available for distance education and for choosing receiving educational entities when the demand for a course exceeds the capacity as determined by either the technology available or the course provider;
- (8) Scheduling and prioritization for access to Network Nebraska by educational entities in cooperation with the Chief Information Officer and using scheduling software or scheduling services which meet any applicable standards established by the commission;
- (9) Administration of learning management systems that are in compliance with any applicable standards of the commission either through the staff of the council or by

delegation to an appropriate educational entity with the funding for such systems provided by participating educational entities; and

(10) Coordination with educational service units and postsecondary educational institutions to provide assistance for instructional design for both two-way interactive video distance education courses and the offering of graduate credit courses in distance education.

Source: Laws 2006, LB 1208, § 20; R.S.Supp.,2006, § 79-1334; Laws 2007, LB603, § 19.
Operative date July 1, 2008.

79-1249 Educational Service Unit Coordinating Council; assistance provided; limitations. The Educational Service Unit Coordinating Council shall only provide assistance in brokering or scheduling courses to educational entities that have access to Network Nebraska. All costs to the council associated with assisting private, denominational, or parochial schools and private postsecondary educational institutions shall be paid by such private, denominational, or parochial school or private postsecondary educational institution. Any services of the council may also be offered to other public entities with access to Network Nebraska on a contractual basis. The council shall not approve technology purchases for the council in excess of ten thousand dollars without approval of the technical panel of the Nebraska Information Technology Commission that the purchases are in compliance with any applicable commission standards.

Source: Laws 2006, LB 1208, § 21; R.S.Supp.,2006, § 79-1335; Laws 2007, LB603, § 20.
Operative date July 1, 2008.

ARTICLE 13

EDUCATIONAL TECHNOLOGY AND TELECOMMUNICATIONS

(a) EDUCATIONAL TECHNOLOGY

Section.

79-1304. Educational Technology Center; duties.

(c) DISTANCE EDUCATION

79-1332. Repealed. Laws 2007, LB 603, § 39.

79-1333. Repealed. Laws 2007, LB 603, § 39.

79-1334. Transferred to section 79-1248.

79-1335. Transferred to section 79-1249.

79-1336. Distance education equipment reimbursement; application; contents; repayment; when; department decisions; appeal.

79-1337. Distance education incentives; application; contents; calculation of incentives; denial of incentives; appeal.

(a) EDUCATIONAL TECHNOLOGY

79-1304 Educational Technology Center; duties. The Educational Technology Center has, but is not limited to, the following specific duties:

(1) To evaluate Internet-based distance education courses;

- (2) To provide clearinghouse services for information concerning current technology projects as well as software and hardware development;
- (3) To serve as a demonstration site for state-of-the-art hardware appropriate to an educational setting;
- (4) To provide technical assistance to educators in working with hardware and software;
- (5) To provide inservice and preservice training for educators, in conjunction with other educational entities as defined in section 79-1201.01, in the use of computers, telecommunications, and other electronic technologies appropriate to an educational setting;
- (6) To sponsor activities which promote the use of technology in the classroom;
- (7) To serve as a liaison between business and education interests in technology communication;
- (8) To experiment with various applications or technology in education;
- (9) To assist schools in planning for and selecting appropriate technologies;
- (10) To design, implement, and evaluate pilot projects to assess the usefulness of technologies in school management, curriculum, instruction, and learning;
- (11) To seek partnerships with the Nebraska Educational Telecommunications Commission, the University of Nebraska, the state colleges, community colleges, educational service units, the Nebraska Library Commission, and other public and private entities in order to make effective use of limited resources;
- (12) To encourage sharing among school districts to deliver cost-efficient and effective distance learning; and
- (13) To identify, evaluate, and disseminate information on school projects which have the potential to enhance the quality of instruction or learning.

Source: Laws 1988, LB 1117, § 3; R.S.1943, (1994), § 79-4,140.11; Laws 1996, LB 900, § 960; Laws 2006, LB 1208, § 16; Laws 2007, LB603, § 28.
Operative date July 1, 2008.

(c) DISTANCE EDUCATION

79-1332 Repealed. Laws 2007, LB 603, § 39.
Operative date July 1, 2008.

79-1333 Repealed. Laws 2007, LB 603, § 39.
Operative date July 1, 2008.

79-1334 Transferred to section 79-1248.

79-1335 Transferred to section 79-1249.

79-1336 Distance education equipment reimbursement; application; contents; repayment; when; department decisions; appeal. (1) For fiscal years 2007-08 through 2013-14, the State Department of Education shall provide distance education equipment reimbursement to school districts and educational service units from the Education Innovation

Fund as provided in this section. Such reimbursements shall be for hardware or software purchased after July 14, 2006, for use in distance education and shall be limited to a total through fiscal year 2013-14 of twenty thousand dollars multiplied by the number of high school buildings for each school district and twenty thousand dollars for each educational service unit office with a distance education classroom, except that no educational service unit shall count more than one office with a distance education classroom for each four thousand square miles within the boundaries of the educational service unit. If a school district has one or more former high school buildings that are no longer being used as high school buildings due to a school district merger and such buildings have distance education classrooms at the time of application, such buildings shall be deemed high school buildings for the purposes of this subsection. The reimbursements may include installation costs for such hardware or software. Applications shall be accepted by the department beginning in the first year that the school district or the educational service unit accesses Network Nebraska and ending June 30, 2013. Applications shall be submitted on or before July 1 of each year on a form specified by the department and shall include:

(a) A description of the hardware or software purchased and how the hardware or software will be used for distance education;

(b) Copies of receipts for the purchases to be reimbursed; and

(c) For school districts, a commitment to either send or receive two-way interactive video distance education courses through the Distance Education Council until July 1, 2008, and the Educational Service Unit Coordinating Council on and after July 1, 2008, each semester, or the equivalent of two semester courses each year, for four years and to apply for distance education incentives pursuant to section 79-1337 or to provide any other evidence required by the department to show that the commitment was met.

(2) On or before August 1 of each year, the department shall certify the reimbursements to be paid to each school district or educational service unit on or before September 1 of each year.

(3) The department shall use the applications for distance education incentives submitted pursuant to section 79-1337 and any other information requested by the department pursuant to rules and regulations of the department to verify that each school district that received a reimbursement completes the commitment to either send or receive two-way interactive video distance education courses through the council for four years. Any school district failing to complete such commitment shall repay the Education Innovation Fund for the amount of any reimbursements received pursuant to this section. On or before September 1 of each year, the department shall notify any school district failing to complete the commitment for the prior school year that repayment of the reimbursement is required and the amount of such repayment. Repayments shall be due on or before the immediately following December 31. Late repayments shall accrue interest at the rate prescribed in section 45-104.02 from the date of the initial reimbursement.

(4) On or before October 1 of each year, a school district or educational service unit may appeal the denial of reimbursements or a school district may appeal the requirement to repay

reimbursements to the State Board of Education. The board shall allow a representative of the school district or educational service unit an opportunity to present information concerning the appeal to the board at the November board meeting. If the board finds that the department denied the reimbursement in error, the department shall pay the district or educational service unit from the Education Innovation Fund as soon as practical the amount which was denied in error. If the board finds that the department erred in notifying a school district that a reimbursement is required to be repaid, such notification shall be void.

(5) The State Board of Education shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2006, LB 1208, § 22; Laws 2007, LB603, § 29.
Operative date September 1, 2007.

79-1337 Distance education incentives; application; contents; calculation of incentives; denial of incentives; appeal. (1) For fiscal years 2007-08 through 2015-16, the State Department of Education shall provide distance education incentives from the Education Innovation Fund to school districts and educational service units for qualified distance education courses and coordinated through the Distance Education Council until July 1, 2008, and the Educational Service Unit Coordinating Council on and after July 1, 2008, as provided in this section.

(2) School districts and educational service units shall apply for incentives annually to the department on or before August 1 on a form specified by the department. The application shall:

(a) For school districts, specify (i) the qualified distance education courses which were received by students in the membership of the district in the then-current school fiscal year and which were not taught by a teacher employed by the school district and (ii) for each such course (A) the number of students in the membership of the district who received the course, (B) the educational entity employing the teacher, and (C) whether the course was a two-way interactive video distance education course; and

(b) For school districts and educational service units, specify (i) the qualified distance education courses which were received by students in the membership of another educational entity in the then-current school fiscal year and which were taught by a teacher employed by the school district or educational service unit, (ii) for each such course for school districts, the number of students in the membership of the district who received the course, and (iii) for each such course (A) the other educational entities in which students received the course and how many students received the course at such educational entities, (B) any school districts in the sparse cost grouping or the very sparse cost grouping as described in section 79-1007.02 that had at least one student in the membership who received the course, and (C) whether the course was a two-way interactive video distance education course.

(3) On or before September 1 of each year, the department shall certify the incentives to be paid to each school district and educational service unit on or before October 1 of each year. The incentives for each district shall be calculated as follows:

(a) Each district shall receive distance education units for each qualified distance education course as follows:

(i) One distance education unit for each qualified distance education course received as reported pursuant to subdivision (2)(a) of this section if the course was a two-way interactive video distance education course;

(ii) One distance education unit for each qualified distance education course sent as reported pursuant to subdivision (2)(b) of this section if the course was not received by at least one student who was in the membership of another school district which was in the sparse cost grouping or the very sparse cost grouping;

(iii) One distance education unit for each qualified distance education course sent as reported pursuant to subdivision (2)(b) of this section if the course was received by at least one student who was in the membership of another school district which was in the sparse cost grouping or the very sparse cost grouping, but the course was not a two-way interactive video distance education course; and

(iv) Two distance education units for each qualified distance education course sent as reported pursuant to subdivision (2)(b) of this section if the course was received by at least one student who was in the membership of another school district which was in the sparse cost grouping or the very sparse cost grouping and the course was a two-way interactive video distance education course;

(b) The difference of the amount available for distribution in the Education Innovation Fund on the August 1 when the applications were due minus any amount to be paid to school districts pursuant to section 79-1336 shall be divided by the number of distance education units to determine the incentive per distance education unit, except that the incentive per distance education unit shall not equal an amount greater than one thousand dollars; and

(c) The incentives for each school district shall equal the number of distance education units calculated for the school district multiplied by the incentive per distance education unit.

(4) If there are additional funds available for distribution after equipment reimbursements pursuant to section 79-1336 and incentives calculated pursuant to subsections (1) through (3) of this section, school districts and educational service units may qualify for additional incentives for elementary distance education courses. Such incentives shall be calculated for sending and receiving school districts and educational service units as follows:

(a) The per-hour incentives shall equal the funds available for distribution after equipment reimbursements pursuant to section 79-1336 and incentives calculated pursuant to subsections (1) through (3) of this section divided by the sum of the hours of elementary distance education courses sent or received for each school district and educational service unit submitting an application, except that the per-hour incentives shall not be greater than ten dollars; and

(b) The elementary distance education incentives for each school district and educational service unit shall equal the per-hour incentive multiplied by the hours of elementary distance education courses sent or received by the school district or educational service unit.

(5) The department may verify any or all application information using annual curriculum reports and may request such verification from the council.

(6) On or before October 1 of each year, a school district or educational service unit may appeal the denial of incentives for any course by the department to the State Board of Education. The board shall allow a representative of the school district or educational service unit an opportunity to present information concerning the appeal to the board at the November board meeting. If the board finds that the course meets the requirements of this section, the department shall pay the district from the Education Innovation Fund as soon as practical in an amount for which the district or educational service unit should have qualified based on the incentive per distance education unit used in the original certification of incentives pursuant to this section.

(7) The State Board of Education shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2006, LB 1208, § 23; Laws 2007, LB603, § 30.
Operative date September 1, 2007.

ARTICLE 19

NEBRASKA READ, EDUCATE, AND DEVELOP YOUTH ACT

Section.

79-1902. State Department of Education; cooperation with Department of Health and Human Services; develop educational packet; contents.

79-1903. Packet; development; distribution; private financial assistance.

79-1904. READY Cash Fund; created; use; investment.

79-1905. Report.

79-1902 State Department of Education; cooperation with Department of Health and Human Services; develop educational packet; contents. (1) The State Department of Education, in cooperation with the Department of Health and Human Services, shall develop a packet entitled "Learning Begins at Birth" to be given to the parents of each child born in this state on and after January 1, 2003.

(2) The packet shall contain information about child development, child care, how children learn, children's health including, on and after July 14, 2006, information on the prevention of sudden infant death syndrome and shaken baby syndrome, services available to children and parents, and any other information deemed relevant by the Department of Health and Human Services or the State Department of Education. The State Department of Education shall indicate which information in the packet is appropriate for the parents of infants, for the parents of toddlers, and for the parents of preschoolers.

(3) The State Department of Education shall develop a variety of types of the packet, based on the needs of parents. The information in the packets may be in the form of printed material or in the form of video tapes, audio cassettes, or other appropriate media.

Source: Laws 2002, LB 326, § 2; Laws 2006, LB 994, § 109; Laws 2007, LB296, § 714.
Operative date July 1, 2007.

79-1903 Packet; development; distribution; private financial assistance. (1) The Department of Health and Human Services shall assist the State Department of Education in developing the packet and shall develop methods of distributing the packet to parents upon the birth of a child in this state beginning on January 1, 2003.

(2) The departments shall solicit private financial assistance to carry out their duties under the Nebraska Read, Educate, and Develop Youth Act. The departments shall not endorse any private company or product, but private companies may have their names placed on materials in the packet to help underwrite the costs of developing and distributing the packets.

Source: Laws 2002, LB 326, § 3; Laws 2007, LB296, § 715.
Operative date July 1, 2007.

79-1904 READY Cash Fund; created; use; investment. The READY Cash Fund is created. The fund shall contain money received from private sources to underwrite the costs of the Nebraska Read, Educate, and Develop Youth Act. The fund shall be used by the State Department of Education and the Department of Health and Human Services to aid in carrying out their duties under the act. The fund shall be administered by the Department of Health and Human Services. Any money in the fund available for investment may be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2002, LB 326, § 4; Laws 2007, LB296, § 716.
Operative date July 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.

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

79-1905 Report. The State Department of Education and the Department of Health and Human Services shall annually report to the Legislature and the Governor regarding the actions, activities, accomplishments, and shortcomings in carrying out the Nebraska Read, Educate, and Develop Youth Act.

Source: Laws 2002, LB 326, § 5; Laws 2007, LB296, § 717.
Operative date July 1, 2007.

ARTICLE 21

LEARNING COMMUNITY

Section.

- 79-2101. Learning community, defined; fiscal year.
- 79-2102. Establishment of new learning community; Commissioner of Education; certification.
- 79-2102.01. Learning community coordinating council; meeting; officers; Commissioner of Education; duties.
- 79-2103. State Department of Education; learning community funds; distribution.
- 79-2104. Learning community coordinating council; powers.
- 79-2105. Repealed. Laws 2007, LB 641, § 54.
- 79-2106. Repealed. Laws 2007, LB 641, § 54.
- 79-2107. Boundaries of certain school districts; requirements.
- 79-2108. Repealed. Laws 2007, LB 641, § 54.
- 79-2109. Repealed. Laws 2007, LB 641, § 54.
- 79-2110. Diversity plan; development and administration; school building maximum capacity; attendance areas; school board; duties; application to attend school outside attendance area; procedure; continuing student; notice.
- 79-2111. Elementary learning center facilities; capital projects; tax levy; repayment of funds; interest; waiver.
- 79-2112. Elementary learning center; elementary learning center executive director; qualifications; term; removal; vacancy; assistants and employees.
- 79-2113. Elementary learning center; establishment; achievement subcouncil; plan; powers and duties; location of facilities.
- 79-2114. Elementary learning center; services and programs; report required.
- 79-2115. Learning community funds; use; learning community coordinating council; powers and duties; pilot project; audits and evaluations.
- 79-2116. Elementary learning center; employees; terms and conditions of employment.
- 79-2117. Learning community coordinating council; achievement subcouncil; meeting; hearing; duties.
- 79-2118. Diversity plan; contents; approval; report.

79-2101 Learning community, defined; fiscal year. Learning community means a political subdivision which shares the territory of member school districts and is governed by a learning community coordinating council. The fiscal year for a learning community shall be the same as for member school districts.

Source: Laws 2006, LB 1024, § 103; Laws 2007, LB641, § 35.
Effective date September 1, 2007.

79-2102 Establishment of new learning community; Commissioner of Education; certification. On or before September 15, 2007, and on or before August 1 of each odd-numbered year following the official designation of any new city of the metropolitan class or any valid request to form a new learning community, the Commissioner of Education shall certify the establishment of a new learning community with the effective date of the first Thursday after the first Tuesday in January of the next odd-numbered year following

such certification to the county clerks, election commissioners, and county assessors of the counties with territory in the new learning community, to the Property Tax Administrator, to the State Department of Education, and to the school boards of the member school districts of the new learning community. A learning community shall be established for each city of the metropolitan class and shall include all school districts for which the principal office of the school district is located in the county where the city of the metropolitan class is located and all school districts for which the principal office of the school district is located in a county that has a contiguous border of at least five miles in the aggregate with such city of the metropolitan class. A learning community may also be established for one or more counties at the request of the school boards of all school districts for which the principal office of the school district is located in the specified county or counties if such school districts have a minimum combined total of at least two thousand students, except that districts in local systems that are in the sparse cost grouping or the very sparse cost grouping as described in section 79-1007.02 need not have a minimum combined total of at least two thousand students but a learning community with fewer than two thousand students shall include at least two school districts. Such requests shall be received by the Commissioner of Education on or before May 1 of each odd-numbered year.

Source: Laws 2006, LB 1024, § 104; Laws 2007, LB641, § 36.
Effective date September 1, 2007.

79-2102.01 Learning community coordinating council; meeting; officers; Commissioner of Education; duties. The Commissioner of Education or his or her designee shall convene a meeting of the newly elected learning community coordinating council during the month of January following the election. At such meeting, the council shall elect officers and shall begin taking the necessary steps to begin operating as a learning community. The commissioner or his or her designee shall schedule and host such meeting and shall serve as a facilitator at such meeting.

Source: Laws 2007, LB641, § 38.
Effective date September 1, 2007.

79-2103 State Department of Education; learning community funds; distribution. The State Department of Education shall provide learning community funds to learning communities pursuant to this section. Learning community funds shall be distributed to each qualified learning community on or before January 30 of the school fiscal year during which the learning community is established and on or before September 15 of each school fiscal year thereafter in an amount equal to the product of the ratio of the amount appropriated for learning community funds divided by the sum of the number of formula students in all learning communities that will be established during such fiscal year plus two times the number of formula students in all other learning communities for the calculation of state aid for member school districts for such school fiscal year multiplied by the number of such formula students in the learning community for learning communities that will be established in such school fiscal year or two times the number of such formula students for all other

learning communities. It is the intent of the Legislature to appropriate for each fiscal year up to an amount equal to five hundred thousand dollars for each learning community to be established in such fiscal year plus one million dollars for each learning community that will be in the first full fiscal year for such learning community in such fiscal year plus the amount appropriated in the prior year for all other learning communities increased by the basic allowable growth rate described in section 79-1025.

Source: Laws 2006, LB 1024, § 105; Laws 2007, LB641, § 39.
Effective date September 1, 2007.

79-2104 Learning community coordinating council; powers. A learning community coordinating council shall have the authority to:

(1) Levy and distribute a common levy for the general funds of member school districts pursuant to sections 77-3442 and 79-1073;

(2) Levy and distribute a common levy for the special building funds of member school districts pursuant to sections 77-3442 and 79-1073.01;

(3) Levy for capital projects approved by the learning community coordinating council pursuant to sections 77-3442 and 79-2111;

(4) Collect, analyze, and report data and information;

(5) Approve focus schools and programs to be operated by member school districts;

(6) Adopt, approve, and implement an integration and diversity plan which shall include open enrollment and may include focus schools, focus programs, and magnet pathways pursuant to section 79-2110;

(7) Administer the open enrollment provisions in section 79-2110 for the learning community as part of a diversity plan developed by the council to provide educational opportunities which will result in increased diversity in schools across the learning community;

(8) Annually conduct school fairs to provide students and parents the opportunity to explore the educational opportunities available at each school in the learning community and develop other methods for encouraging access to such information and promotional materials;

(9) Develop reorganization plans for submission pursuant to the Learning Community Reorganization Act;

(10) Establish and administer elementary learning centers through achievement subcouncils pursuant to sections 79-2112 to 79-2114;

(11) Administer the learning community funds distributed to the learning community pursuant to section 79-2111;

(12) Approve or disapprove poverty plans and limited English proficiency plans for member school districts;

(13) Establish a procedure for receiving community input and complaints regarding the learning community; and

(14) Establish a procedure to assist parents, citizens, and member school districts in accessing an approved center pursuant to the Dispute Resolution Act to resolve disputes involving member school districts or the learning community. Such procedure shall include payment by the learning community for such mediation services.

Source: Laws 2006, LB 1024, § 106; Laws 2007, LB641, § 40.
Effective date September 1, 2007.

Cross Reference

Dispute Resolution Act, see section 25-2901.

Learning Community Reorganization Act, see section 79-4,117.

79-2105 Repealed. Laws 2007, LB 641, § 54.

79-2106 Repealed. Laws 2007, LB 641, § 54.

79-2107 Boundaries of certain school districts; requirements. The boundaries of all school districts for which the principal office of the school district is located in a county where a city of the metropolitan class is located and all school districts for which the principal office of the school district is located in a county that has a contiguous border of at least five miles in the aggregate with such city of the metropolitan class shall remain as depicted on the map kept by the county clerk pursuant to section 79-490 as of March 1, 2006, for cities of the metropolitan class designated as such prior to January 2008 or as of March 1 immediately preceding the designation as a city of the metropolitan class for cities designated as such on or after January 1, 2008, until a learning community has been established for such city of the metropolitan class.

Source: Laws 2006, LB 1024, § 109; Laws 2007, LB641, § 41.
Effective date September 1, 2007.

79-2108 Repealed. Laws 2007, LB 641, § 54.

79-2109 Repealed. Laws 2007, LB 641, § 54.

79-2110 Diversity plan; development and administration; school building maximum capacity; attendance areas; school board; duties; application to attend school outside attendance area; procedure; continuing student; notice. (1)(a) Each learning community coordinating council, together with its member school districts, shall develop and administer a diversity plan which may be revised from time to time. Each diversity plan shall provide for open enrollment in all school buildings in the learning community, subject to specific limitations necessary to bring about diverse enrollments in each school building in the learning community. Such limitations shall include giving preference at each school building to students that contribute to the socioeconomic diversity of enrollment, as defined in section 79-611, at each building and may include establishing zone limitations in which students may access several schools other than their home attendance area school. Notwithstanding the limitations necessary to bring about diversity, open enrollment shall include providing

access to students who do not contribute to the socioeconomic diversity of a school building, if, subsequent to the regular enrollment process that is subject to limitations necessary to bring about diverse enrollments, capacity remains in a school building. In such a case, a student who applies to attend such school building shall be permitted to enroll at such building unless the student has otherwise been disqualified from the school building pursuant to the school district's code of conduct or related school discipline rules.

(b) To facilitate the open enrollment provisions of this subsection, each school year each member school district in a learning community shall establish a maximum capacity for each school building under such district's control pursuant to procedures and criteria established by the learning community coordinating council. Each member school district shall also establish attendance areas for each school building under the district's control, except that the school board shall not establish attendance areas for focus schools. The attendance areas shall be established such that all of the territory of the school district is within an attendance area for each grade. Students residing in a school district shall be allowed to attend a school building in such school district.

(2)(a) On or before March 15 of each year, a parent or guardian of a student residing in a member school district in a learning community may submit an application to any school district in the learning community on behalf of a student who is applying to attend a school building for the following school year that is not in an attendance area where the applicant resides or a focus school, focus program, or magnet school as such terms are defined in section 79-769. On or before April 1 of each year, the school district shall accept or reject such applications based on the capacity of the school building, the eligibility of the applicant for the school building or program, the number of such applicants that will be accepted for a given school building, and whether or not the applicant contributes to the socioeconomic diversity of the school or program to which he or she has applied and for which he or she is eligible. The school district shall notify such parent or guardian in writing of the acceptance or rejection. Such parent or guardian may provide information on the application regarding the applicant's potential qualification for free or reduced-price lunches. Any such information provided shall be subject to verification and shall only be used for the purposes of this section. Nothing in this section requires a parent or guardian to provide such information. Determinations about an applicant's qualification for free or reduced-price lunches for purposes of this section shall be based on any verified information provided on the application. If no such information is provided the student shall be presumed not to qualify for free or reduced-price lunches for the purposes of this section. A student may not apply to attend a school building in the learning community for any grades that are offered by another school building for which the student had previously applied and been accepted pursuant to this section, absent a hardship exception as established by the individual school district. On or before September 1 of each year, each school district shall provide to the learning community coordinating council a complete and accurate report of all applications received, including the number of students who applied at each grade level at each building, the number of students accepted at each grade level at each

building, the number of such students that contributed to the socioeconomic diversity that applied and were accepted, the number of applicants denied and the rationales for denial, and other such information as requested by the learning community coordinating council.

(b) Each diversity plan may also include establishment of one or more focus schools or focus programs and the involvement of every member school district in one or more magnet pathways across member school districts. Enrollment in each focus school or focus program shall be designed to reflect the socioeconomic diversity of the learning community as a whole. School district selection of students for focus schools or focus programs shall be on a random basis from two pools of applicants, those who qualify for free and reduced-price lunches and those who do not qualify for free and reduced-price lunches. The percentage of students selected for focus schools from the pool of applicants who qualify for free and reduced-price lunches shall be as nearly equal as possible to the percentage of the student body of the learning community who qualify for free and reduced-price lunches. The percentage of students selected for focus schools from the pool of applicants who do not qualify for free and reduced-price lunches shall be as nearly equal as possible to the percentage of the student body of the learning community who do not qualify for free and reduced-price lunches. If more capacity exists in a focus school or program than the number of applicants for such focus school or program that contribute to the socioeconomic diversity of the focus school or program, the school district shall randomly select applicants for approval up to the number of applicants that will be accepted for such building.

(c) The goal of the diversity plan shall be to annually increase the socioeconomic diversity of enrollment at each grade level in each school building within the learning community until such enrollment reflects the average socioeconomic diversity of the entire enrollment of the learning community. The learning community shall annually publish statistics on changes in diversity at each grade level in each school building within the learning community.

(d) Any student who attended a particular school building in the prior school year and who is seeking education in the grades offered in such school building shall be allowed to continue attending such school building as a continuing student.

(3) On or before February 15 of each year, a parent or guardian of a student who is currently attending a school building outside of the attendance area where the student resides and who will complete the grades offered at such school building prior to the following school year shall provide notice, on a form provided by the school district, to the school board of the school district containing such school building if such student will attend another school building within such district as a continuing student and which school building such student would prefer to attend. On or before March 1, such school board shall provide a notice to such parent or guardian stating which school building or buildings the student shall be allowed to attend in such school district as a continuing student for the following school year. If the student resides within the school district, the notice shall include the school building offering the grade the student will be entering for the following school year in the attendance area where the student resides. This subsection shall not apply to focus schools or programs.

(4) A student who will complete the grades offered at a magnet school shall be allowed to attend the magnet school offering the next grade level as part of the magnet pathway as a continuing student.

(5) A parent or guardian of a student who moves to a new residence in the learning community after April 1 may apply directly to a school board within the learning community within ninety days after moving for the student to attend a school building outside of the attendance area where the student resides. Such school board shall accept or reject such application within fifteen days after receiving the application, based on the number of applications and qualifications pursuant to subsection (2) of this section for all other students.

(6) A parent or guardian of a student who wishes to change school buildings for emergency or hardship reasons may apply directly to a school board within the learning community at any time for the student to attend a school building outside of the attendance area where the student resides. Such application shall state the emergency or hardship and shall be kept confidential by the school board. Such school board shall accept or reject such application within fifteen days after receiving the application. Applications shall only be accepted if an emergency or hardship was presented which justifies an exemption from the procedures in subsection (3) of this section based on the judgment of such school board, and such acceptance shall not exceed the number of applications that will be accepted for the school year pursuant to subsection (2) of this section for such building.

(7) For purposes of this section, a student is deemed to reside in any attendance area where such student or at least one of his or her parents or guardians resides.

Source: Laws 2006, LB 1024, § 16; Laws 2007, LB641, § 42.
Effective date September 1, 2007.

79-2111 Elementary learning center facilities; capital projects; tax levy; repayment of funds; interest; waiver. (1) A learning community may levy a maximum levy pursuant to subdivision (2)(h) of section 77-3442 for the purchase, construction, or remodeling of elementary learning center facilities and up to fifty percent of the estimated costs for capital projects approved pursuant to this section. The proceeds from such levy shall be used for elementary learning center facilities and for one-time reductions of the bonded indebtedness required for approved projects up to fifty percent of the estimated cost of the approved project. The funds used for reductions of bonded indebtedness shall be transferred to the school district for which the project was approved and shall be deposited in such school district's special building fund for use on such project.

(2) The learning community may approve pursuant to this section funding for capital projects which will include the purchase, construction, or remodeling of facilities for (a) a focus school or program designed to meet the requirements of section 79-769 or (b) a school or program that will otherwise specifically attract a more economically and culturally diverse student body than would otherwise attend a school or program in a facility at that location.

Such approval shall include an estimated cost for the project and shall state the amount that will be provided by the learning community for such project.

(3) If, within the ten years following receipt of the funding for a capital project pursuant to this section, a school district receiving such funding uses the facility purchased, constructed, or remodeled with such funding for purposes other than those stated to qualify for the funds, the school district shall repay such funds to the learning community with interest at the rate prescribed in section 45-104.02 accruing from the date the funds were transferred to the school district's building fund as of the last date the facility was used for such purpose as determined by the learning community coordinating council or the date that the learning community coordinating council determines that the facility will not be used for such purpose or that such facility will not be purchased, constructed, or remodeled for such purpose. Interest shall continue to accrue on outstanding balances until the repayment has been completed. The remaining terms of repayment shall be determined by the learning community coordinating council. The learning community coordinating council may waive such repayment if the facility is used for a different (a) focus school or program or (b) school or program that will specifically attract a more economically and culturally diverse student body than would attend a school or program in a facility at that location for a period of time that will result in the use of the facility for qualifying purposes for a total of at least ten years.

Source: Laws 2007, LB641, § 43.
Effective date September 1, 2007.

79-2112 Elementary learning center; elementary learning center executive director; qualifications; term; removal; vacancy; assistants and employees. (1) Elementary learning centers shall serve as visionary resource centers for enhancing the academic success of elementary students, particularly those students who face challenges in the educational environment due to factors such as poverty, limited English skills, and mobility. Each learning community coordinating council shall provide for a system of elementary learning centers to be administered by an elementary learning center executive director.

(2) The elementary learning center executive director shall be appointed by the learning community coordinating council. The executive director shall be a person well equipped to work with populations in poverty and to analyze effective methods for assisting and encouraging such populations to access the programs offered by elementary learning centers. The elementary learning center executive director shall serve for a term of six years, unless removed by a vote of two-thirds of the members of the learning community coordinating council upon their determination that he or she has become incapacitated or has been guilty of neglect of duty or misconduct. If the position of elementary learning center executive director becomes vacant for any cause, a temporary elementary learning center executive director may serve for up to one year until an elementary learning center executive director has been appointed for a full term. The elementary learning center executive director shall receive such salary as is set by the learning community coordinating council.

(3) The elementary learning center executive director may select, appoint, and compensate as he or she sees fit, within the amount provided by the learning community coordinating council, such noncertificated assistants and noncertificated employees as he or she deems necessary to discharge the responsibilities under sections 79-2112 to 79-2114. Such assistants and employees shall be subject to the control and supervision of the elementary learning center executive director.

Source: Laws 2007, LB641, § 44.
Effective date September 1, 2007.

79-2113 Elementary learning center; establishment; achievement subcouncil; plan; powers and duties; location of facilities. (1) On or before July 1 immediately following the establishment of a new learning community, the learning community coordinating council shall establish at least one elementary learning center for each twenty-five elementary schools in which at least thirty-five percent of the students attending the school who reside in the attendance area of such school qualify for free or reduced-price lunches.

(2) Each achievement subcouncil shall submit a plan to the learning community coordinating council for any elementary learning center in its election district and the services to be provided by such elementary learning center. In developing the plan, the achievement subcouncil shall seek input from community resources and collaborate with such resources in order to maximize the available opportunities and the participation of elementary students and their families. An achievement subcouncil may, as part of such plan, recommend services be provided through contracts with, or grants to, entities other than school districts to provide some or all of the services. Such entities may include collaborative groups which may include the participation of a school district. An achievement subcouncil may also, as part of such plan, recommend that the elementary learning center serve as a clearinghouse for recommending programs provided by school districts or other entities and that the elementary learning center assist students in accessing such programs.

(3) Each elementary learning center shall have at least one elementary learning center facility that is located in an area with a high concentration of poverty within the region. Such facility may be owned or leased by the learning community, or the use of the facility may be donated to the learning community. Programs offered by the elementary learning center may be offered in such facility or in other facilities located within the elementary learning center.

Source: Laws 2007, LB641, § 45.
Effective date September 1, 2007.

79-2114 Elementary learning center; services and programs; report required. (1) Programs offered by an elementary learning center may be accessed by any elementary-age child who resides in the learning community or any family with an elementary-age child who resides in the learning community. Services to be provided by the elementary learning center shall comply with all applicable state regulations for such services, including, but not limited to, regulations requiring certification of teachers, safety provisions, and compliance with state

standards. Such programs shall be designed to enhance the academic success of elementary students and may include, but are not limited to:

- (a) Summer school, extended-school-day programs, and extended-school-year programs which may be coordinated with programs offered in the schools;
 - (b) Literacy centers for providing intensive assistance to elementary-age children and their parents to work on reading skills outside of the school day;
 - (c) Computer labs;
 - (d) Tutors for elementary students;
 - (e) Mentors for elementary students;
 - (f) Services for transient students;
 - (g) Attendance advocates to assist in resolving issues that contribute to truancy;
 - (h) Transportation for truant students;
 - (i) English classes for parents and other family members;
 - (j) Health services;
 - (k) Mental health services;
 - (l) Child care for children of parents working on their own literacy skills or working with their children on academic skills at the center;
 - (m) Nutritional services for families working on skills at the center;
 - (n) Transportation for participating families;
 - (o) Distribution of clothing and school supplies;
 - (p) Information on other resources to assist participating families; and
 - (q) Interpreter services for educational needs.
- (2) Each elementary learning center shall report the participation of elementary students in academic programs offered by or in collaboration with the center to the elementary schools attended by such students.

Source: Laws 2007, LB641, § 46.
Effective date September 1, 2007.

79-2115 Learning community funds; use; learning community coordinating council; powers and duties; pilot project; audits and evaluations. (1) Learning community funds distributed pursuant to section 79-2103 may be used by the learning community coordinating council receiving the funds for:

- (a) The administration and operation of the learning community;
- (b) The administration, operations, and programs of elementary learning centers pursuant to sections 79-2112 to 79-2114;
- (c) Supplements for extended hours to teachers in elementary schools in which at least thirty-five percent of the students attending the school who reside in the attendance area of such school qualify for free or reduced-price lunches;
- (d) Transportation for parents to school functions of students in elementary schools who qualify for free or reduced-price lunches; and

(e) Pilot projects related to enhancing the academic achievement of elementary students, particularly students who face challenges in the educational environment due to factors such as poverty, limited English skills, and mobility.

(2) Each learning community coordinating council shall adopt policies and procedures for granting supplements for extended hours and for providing transportation for parents if any such funds are to be used for such purposes. An example of a pilot project that could receive such funds would be a school designated as Jump Start Center focused on providing intensive literacy services for elementary students with low reading scores.

(3) A learning community coordinating council shall provide for financial audits and evaluations of effectiveness of elementary learning centers and pilot projects receiving funds pursuant to this section. A learning community coordinating council shall serve as the recipient of private funds donated to support any elementary learning center or pilot project receiving funds pursuant to this section from such learning community coordinating council and shall assure that the use of such private funds is included in the financial audits required pursuant to this section.

Source: Laws 2007, LB641, § 47.
Effective date September 1, 2007.

79-2116 Elementary learning center; employees; terms and conditions of employment. Terms and conditions of employment of school employees providing services for an elementary learning center shall be established by the negotiated agreement of the learning community employing such school employees to provide services. For certificated employees as defined in subdivision (1) of section 79-824, the learning community shall be deemed to be an employer as defined in subdivision (4) of section 48-801. Compensation paid to school employees for services provided to a learning community shall be subject to the School Employees Retirement Act unless such employee is employed by a Class V school district, in which case compensation paid such school employee shall be subject to the Class V School Employees Retirement Act.

Source: Laws 2007, LB641, § 48.
Effective date September 1, 2007.

Cross Reference

Class V School Employees Retirement Act, see section 79-978.01.
School Employees Retirement Act, see section 79-901.

79-2117 Learning community coordinating council; achievement subcouncil; meeting; hearing; duties. Each learning community coordinating council shall designate the three members representing each election district as the achievement subcouncil for such election district. Each achievement subcouncil shall meet as necessary but shall meet and conduct a public hearing within its election district at least once each school year. Each achievement subcouncil shall:

(1) Develop a diversity plan recommendation for the territory in its election district that will provide educational opportunities which will result in increased diversity in schools in the election district;

(2) Administer elementary learning centers in cooperation with the elementary learning center executive director;

(3) Review and approve or disapprove of the poverty plans and limited English proficiency plans for the schools located in its election district;

(4) Receive community input and complaints regarding the learning community and academic achievement in the election district; and

(5) Hold public hearings at its discretion in its election district in response to issues raised by residents of the election district regarding the learning community, a member school district, and academic achievement in the election district.

Source: Laws 2007, LB641, § 50.
Effective date September 1, 2007.

79-2118 Diversity plan; contents; approval; report. Each learning community, together with its member school districts, shall develop a diversity plan to provide educational opportunities in each election district designed to attract students from diverse backgrounds, which plan may be revised from time to time. Each diversity plan for a learning community shall include specific provisions relating to each election district with such learning community. The specific provisions relating to each election district shall be approved by both the achievement subcouncil for such district and by the learning community coordinating council. The learning community coordinating council shall report to the Education Committee of the Legislature on or before December 1 of each even-numbered year on diversity in the school or learning community and academic achievement for different demographic groups.

Source: Laws 2007, LB641, § 51.
Effective date September 1, 2007.

CHAPTER 80

SOLDIERS AND SAILORS

Article.

3. Nebraska Veterans Homes. 80-314 to 80-325.

ARTICLE 3

NEBRASKA VETERANS HOMES

Section.

- 80-314. Division of Veterans' Homes; duties; Director of Veterans' Homes; rules and regulations.
- 80-316. Division of Veterans' Homes; purpose; admission; requirements.
- 80-317. Nebraska veterans homes; Veterans' Homes Board; rules of membership; application.
- 80-318. Veterans' Homes Board; members; appointment; compensation; expenses.
- 80-319. Veterans' Homes Board; duties; powers; meetings.
- 80-320. Director of Veterans' Homes; rules and regulations.
- 80-321. Member; payment for care; public expense.
- 80-322. Reimbursement of costs.
- 80-325. Administrator of Nebraska veterans homes; qualifications.

80-314 Division of Veterans' Homes; duties; Director of Veterans' Homes; rules and regulations. The Division of Veterans' Homes shall be responsible for the management and administration of the homes and the treatment of the members thereof, define the duties of the officers, fix their compensation, and adopt and promulgate rules and regulations. The Director of Veterans' Homes and the Director of Veterans' Affairs shall jointly develop member grievance procedures, family support programs, volunteer support, policy, and internal standards. The Director of Veterans' Affairs shall have access to all confidential information relating to members' care.

Source: Laws 1887, c. 82, § 6, p. 626; Laws 1891, c. 49, § 3, p. 343; Laws 1893, c. 33, § 1, p. 361; Laws 1905, c. 145, § 2, p. 586; R.S.1913, § 7305; C.S.1922, § 6960; Laws 1923, c. 183, § 1, p. 424; C.S.1929, § 80-304; R.S.1943, § 80-304; Laws 1949, c. 272, § 3(1), p. 893; Laws 1959, c. 420, § 2, p. 1416; Laws 1980, LB 184, § 3; Laws 1996, LB 1044, § 831; R.S.1943, (1996), § 80-304; Laws 1997, LB 396, § 3; Laws 2007, LB296, § 718.
Operative date July 1, 2007.

80-316 Division of Veterans' Homes; purpose; admission; requirements. (1) The purpose of the Division of Veterans' Homes of the Department of Health and Human Services is to provide domiciliary and nursing home care and subsistence to:

(a) All persons who served in the armed forces of the United States during a period of war as defined in section 80-401.01 and who were discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) if, at the time of making an application for admission to one of the Nebraska veterans homes:

(i) The applicant has been a bona fide resident of the State of Nebraska for at least two years;

(ii) The applicant has become disabled due to service, old age, or otherwise to an extent that it would prevent such applicant from earning a livelihood; and

(iii) The applicant's income from all sources is such that the applicant would be dependent wholly or partially upon public charities for support or the type of care needed is available only at a state institution;

(b) The spouse of any such person admitted to one of the homes who has attained the age of fifty years and has been married to such member for at least two years before his or her entrance into the home;

(c) Subject to subsection (2) of this section, the surviving spouses and parents of eligible servicemen and servicewomen as defined in subdivision (a) of this subsection who died while in the service of the United States or who have since died of a service-connected disability as determined by the United States Department of Veterans Affairs; and

(d) Subject to subsection (2) of this section, the surviving spouses of eligible servicemen or servicewomen as defined in subdivision (a) of this subsection who have since died.

(2) The surviving spouses and parents referred to in subdivision (1)(c) or (d) of this section shall be eligible for such care and subsistence if, at the time of applying, they:

(a) Have been bona fide residents of the State of Nebraska for at least two years;

(b) Have attained the age of fifty years;

(c) Are unable to earn a livelihood; and

(d) Are dependent wholly or partially upon public charities or the type of care needed is available only at a state institution.

(3) No one admitted to one of the Nebraska veterans homes under conditions enumerated in this section shall have a vested right to continued residence in such home if such person ceases to meet any of the eligibility requirements of this section, except that no person who has been regularly admitted shall be denied continued residence solely because of his or her marriage to a member of one of the homes.

Source: Laws 1997, LB 396, § 5; Laws 2005, LB 54, § 26; Laws 2007, LB296, § 719.
Operative date July 1, 2007.

80-317 Nebraska veterans homes; Veterans' Homes Board; rules of membership; application. The Veterans' Homes Board shall prescribe rules of membership in the Nebraska veterans homes in accordance with sections 80-314 to 80-331. An application for membership in a Nebraska veterans home shall be made to a county veterans service officer who shall coordinate the required financial and medical information and, if necessary, provide an opinion regarding its validity. The county veterans service officer shall at once forward the application together with his or her finding in regard to the condition of the applicant to the board, whose duty it is to receive, review, and act upon applications for membership. During the interim between meetings of the board, the secretary of the board is authorized to adjudicate applications, subject to the approval of the full board at its next meeting.

Source: Laws 1887, c. 82, § 1, p. 622; Laws 1889, c. 85, § 1, p. 569; Laws 1891, c. 49, § 1, p. 340; Laws 1901, c. 71, § 1, p. 458; R.S.1913, § 7302; Laws 1919, c. 157, § 1, p. 354; C.S.1922, § 6957; C.S.1929, § 80-301; Laws 1931, c. 153, § 1, p. 412; Laws 1935, c. 172, § 1, p. 627; C.S.Supp.,1941, § 80-301; Laws 1943, c. 211, § 1, p. 696; R.S.1943, § 80-301; Laws 1949, c. 272, § 1, p. 891; Laws 1953, c. 325, § 1, p. 1075; Laws 1959, c. 421, § 1, p. 1417; Laws 1969, c. 753, § 1, p. 2833; Laws 1969, c. 584, § 93, p. 2402; Laws 1971, LB 334, § 1; Laws 1973, LB 33, § 1; Laws 1975, LB 90, § 2; Laws 1980, LB 184, § 2; Laws 1995, LB 64, § 1; R.S.1943, (1996), § 80-302; Laws 1997, LB 396, § 6; Laws 2007, LB296, § 720.
Operative date July 1, 2007.

Cross Reference

For official name of homes, see section 83-107.01.

80-318 Veterans' Homes Board; members; appointment; compensation; expenses. For the purpose of determining continued eligibility of members to remain in one of the Nebraska veterans homes and for the purpose of recommending matters of policy, rules and regulations, administration, and maintenance pertaining to each of the Nebraska veterans homes, the Veterans' Homes Board is established. The board shall be composed of two members selected by each of the recognized veterans organizations in Nebraska identified in subdivision (1) of section 80-401.01, and the Director of Veterans' Affairs who shall serve as the permanent board secretary. Such members shall be selected in the manner and serve for such term as the veterans organization may prescribe. If a member selected by any such veterans organization is unavailable to attend a meeting of the board or unable to serve for any reason, the incumbent department commander of such organization may appoint some other member of his or her organization to serve on the board. The chairperson shall be selected from among the members of the board. No salary shall be paid to any member of the board, but actual expenses of the members of the board when attending regularly called meetings of that board shall be paid as provided in sections 81-1174 to 81-1177 from the administrative funds of the Department of Veterans' Affairs.

Source: Laws 1949, c. 272, § 4(1), p. 893; Laws 1951, c. 300, § 1, p. 989; Laws 1979, LB 271, § 1; Laws 1980, LB 184, § 5; Laws 1981, LB 204, § 165; Laws 1982, LB 564, § 1; R.S.1943, (1996), § 80-305; Laws 1997, LB 396, § 7; Laws 2005, LB 54, § 27; Laws 2007, LB296, § 721.
Operative date July 1, 2007.

80-319 Veterans' Homes Board; duties; powers; meetings. The Veterans' Homes Board shall meet at least quarterly and at other times at the request of either the chairperson or the secretary of the board at a site selected by the secretary after consultation with the chairperson. The board shall review all applications submitted for admission to the Nebraska veterans homes system and shall make all final determinations regarding admission, or continued admission, to one of the homes. The board may check periodically on members of the Nebraska veterans homes to determine whether or not their physical or financial status has so changed since admission that they should no longer be maintained there. The board has power to subpoena witnesses and take testimony under oath relative to the duties of the board. No specified amount, either as to income or accumulated reserve, shall be arbitrarily fixed for determining the eligibility of an applicant to membership or to continuing rights of membership, but each case shall be considered solely on its merits and the evidence

presented. The Division of Veterans' Homes shall consult with the board prior to denying further residence to members the board finds should no longer be supported there.

Source: Laws 1949, c. 272, § 4(2), p. 894; Laws 1953, c. 325, § 2, p. 1076; Laws 1971, LB 334, § 3; Laws 1980, LB 184, § 6; Laws 1996, LB 1044, § 832; R.S.1943, (1996), § 80-306; Laws 1997, LB 396, § 8; Laws 2007, LB296, § 722.
Operative date July 1, 2007.

80-320 Director of Veterans' Homes; rules and regulations. Nothing in sections 80-314 to 80-331 shall be construed as limiting the authority vested with the Director of Veterans' Homes to adopt and promulgate rules and regulations, not inconsistent herewith, for the administration of the Nebraska veterans homes. The Department of Health and Human Services, in conjunction and after consultation with the Veterans' Homes Board, shall adopt and promulgate rules and regulations governing admission to and administration of the homes.

Source: Laws 1909, c. 134, § 1, p. 482; R.S.1913, § 7306; C.S.1922, § 6961; C.S.1929, § 80-305; R.S.1943, § 80-305; Laws 1949, c. 272, § 4(3), p. 894; Laws 1953, c. 325, § 3, p. 1077; Laws 1980, LB 184, § 7; Laws 1996, LB 1044, § 833; R.S.1943, (1996), § 80-307; Laws 1997, LB 396, § 9; Laws 2007, LB296, § 723.
Operative date July 1, 2007.

80-321 Member; payment for care; public expense. Nothing in sections 80-314 to 80-331 shall be construed to deny any person who has been properly admitted to one of the Nebraska veterans homes the privilege of paying the cost of his or her care, or any part thereof, if he or she so desires or if it has been determined by the Veterans' Homes Board that his or her financial status is such that he or she should no longer be maintained there at public expense.

Source: Laws 1891, c. 49, § 7, p. 346; Laws 1909, c. 134, § 1, p. 482; R.S.1913, § 7306; C.S.1922, § 6961; C.S.1929, § 80-305; R.S.1943, § 80-305; Laws 1949, c. 272, § 5, p. 895; Laws 1971, LB 334, § 4; Laws 1980, LB 184, § 8; R.S.1943, (1996), § 80-308; Laws 1997, LB 396, § 10; Laws 2007, LB296, § 724.
Operative date July 1, 2007.

80-322 Reimbursement of costs. Any veteran, spouse, surviving spouse, or parent admitted to one of the Nebraska veterans homes under section 80-316 who has an income in excess of forty dollars per month, including federal pension, compensation, or social security, or has sufficient assets will be required to reimburse the state monthly a reasonable amount for the expense of his or her maintenance. The amount shall be determined by the Veterans' Homes Board. All money paid to the state by members of the Nebraska veterans homes in compliance with this section shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund.

Source: Laws 1997, LB 396, § 11; Laws 2007, LB296, § 725.
Operative date July 1, 2007.

80-325 Administrator of Nebraska veterans homes; qualifications. The administrator of the Nebraska veterans homes shall be a licensed nursing home administrator licensed under the Nursing Home Administrator Practice Act. Qualified applicants for the

position of administrator who were discharged or otherwise separated with a characterization of honorable from the armed forces of the United States during a period of war as defined in section 80-401.01 shall be given a preference over other applicants.

Source: Laws 1913, c. 179, § 11, p. 538; R.S.1913, § 7189; Laws 1917, c. 131, § 1, p. 312; Laws 1921, c. 200, § 1, p. 722; C.S.1922, § 6840; C.S.1929, § 83-111; Laws 1935, c. 185, § 2, p. 685; C.S.Supp.,1941, § 83-111; R.S.1943, § 83-124; Laws 1947, c. 329, § 1, p. 1045; Laws 1951, c. 320, § 1, p. 1092; Laws 1953, c. 340, § 1, p. 1113; Laws 1969, c. 817, § 71, p. 3107; Laws 1971, LB 334, § 5; R.S.1943, (1994), § 83-124; Laws 1997, LB 396, § 14; Laws 2001, LB 10, § 1; Laws 2005, LB 54, § 28; Laws 2007, LB463, § 1310.
Operative date December 1, 2008.

Cross Reference

Nursing Home Administrator Practice Act, see section 38-2401.

CHAPTER 81

STATE ADMINISTRATIVE DEPARTMENTS

Article.

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 - (i) Land Surveying. 81-8,118.
 - (j) State Athletic Commissioner. 81-8,129 to 81-8,139.01.
 - (o) Professional Landscape Architects. 81-8,194.
 - (p) Tort Claims, State Claims Board, and Risk Management Program. 81-8,219 to 81-8,239.11.
 - (v) State Miscellaneous Claims Act. 81-8,294, 81-8,300.01.
10. State-Owned Motor Vehicles. 81-1021.
11. Department of Administrative Services.
 - (a) General Provisions. 81-1108.22 to 81-1139.01.
 - (c) Forms Management Program. 81-1162 to 81-1169. Repealed.
 - (i) Nebraska Public Safety Communication System Revolving Fund. 81-11,105.
12. Department of Economic Development.
 - (a) General Provisions. 81-1201.04 to 81-1201.21.
 - (j) Housing Affordability Strategy. 81-1281.
 - (m) Microenterprise Development Act. 81-12,105.01.

- (p) Building Entrepreneurial Communities Act. 81-12,126 to 81-12,128.
- (q) Nebraska Operational Assistance Act. 81-12,129 to 81-12,135.
- 13. Personnel.
 - (a) State Personnel Service. 81-1316 to 81-1351.
- 14. Law Enforcement.
 - (a) Law Enforcement Training. 81-1401.
- 15. Environmental Protection.
 - (a) Environmental Protection Act. 81-1504.01, 81-1525.
 - (b) Litter Reduction and Recycling Act. 81-1534 to 81-1553.01.
 - (f) Low-Level Radioactive Waste Disposal Act. 81-15,103.
 - (g) Petroleum Products and Hazardous Substances Storage and Handling. 81-15,123.
 - (h) Wastewater Treatment Operator Certification Act. 81-15,130.
 - (l) Waste Reduction and Recycling. 81-15,160.
 - (n) Nebraska Environmental Trust Act. 81-15,170.
 - (r) Technical Advisory Committee. 81-15,189.
 - (s) Nebraska Emergency Planning and Community Right to Know Act. 81-15,210.
 - (t) Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act. 81-15,236 to 81-15,250.01.
- 20. Nebraska State Patrol.
 - (a) General Provisions. 81-2004.01 to 81-2004.07.
 - (b) Retirement System. 81-2014 to 81-2041.
- 21. State Electrical Division. 81-2121.
- 22. Aging Services.
 - (a) Nebraska Community Aging Services Act. 81-2205 to 81-2226.
 - (b) Care Management Services. 81-2229.
 - (c) Long-Term Care Ombudsman. 81-2241 to 81-2260.
 - (d) Preadmission Screening. 81-2265 to 81-2268.
- 30. Nebraska Health and Human Services System Act. Repealed.
- 31. Department of Health and Human Services. 81-3101 to 81-3125.
- 32. Department of Health and Human Services Regulation and Licensure. Repealed.
- 33. Department of Health and Human Services Finance and Support. Repealed.
- 35. Geologists Regulation Act. 81-3541.
- 36. Rural Development Commission. 81-3602.

ARTICLE 1

THE GOVERNOR AND ADMINISTRATIVE DEPARTMENTS

(a) GENERAL PROVISIONS

Section.

- 81-101. Executive department; civil administration vested in Governor; departments created.
- 81-102. Department heads; enumeration; appointment and confirmation; removal.
- 81-109. Department heads; serve without term; exception.

(d) MATERIEL DIVISION OF ADMINISTRATIVE SERVICES

- 81-154. Materiel division; standard specifications; establish and maintain; cooperation of using agencies; competitive bids.
- 81-161.03. Direct purchases, contracts, or leases; approval required, when; report required; materiel division; duties; Department of Correctional Services; purchases authorized.

(f) DEFERRED BUILDING RENEWAL AND MAINTENANCE

- 81-179. Building Renewal Allocation Fund; created; use; investment.
- 81-188.02. State Building Renewal Assessment Fund; capital improvement project; depreciation charges.
- 81-188.04. University Building Renewal Assessment Fund; capital improvement project; depreciation charges.
- 81-188.06. State College Building Renewal Assessment Fund; capital improvement project; depreciation charges.

(a) GENERAL PROVISIONS

81-101 Executive department; civil administration vested in Governor; departments created. The civil administration of the laws of the state is vested in the Governor. For the purpose of aiding the Governor in the execution and administration of the laws, the executive and administrative work shall be divided into the following agencies: (1) Department of Agriculture; (2) Department of Labor; (3) Department of Roads; (4) Department of Natural Resources; (5) Department of Banking and Finance; (6) Department of Insurance; (7) Department of Motor Vehicles; (8) Department of Administrative Services; (9) Department of Economic Development; (10) Department of Correctional Services; (11) Nebraska State Patrol; and (12) Department of Health and Human Services.

Source: Laws 1929, c. 51, § 1, p. 209; C.S.1929, § 81-101; Laws 1933, c. 149, § 1, p. 571; C.S.Supp., 1941, § 81-101; R.S.1943, § 81-101; Laws 1955, c. 329, § 4, p. 1027; Laws 1957, c. 365, § 8, p. 1236; Laws 1957, c. 366, § 51, p. 1282; Laws 1959, c. 424, § 1, p. 1423; Laws 1961, c. 415, § 29, p. 1259; Laws 1961, c. 416, § 9, p. 1267; Laws 1963, c. 504, § 1, p. 1609; Laws 1969, c. 778, § 1, p. 2949; Laws 1973, LB 563, § 16; Laws 1976, LB 561, § 4; Laws 1981, LB 541, § 4; Laws 1991, LB 58, § 2; Laws 1996, LB 1044, § 835; Laws 1999, LB 36, § 35; Laws 2000, LB 900, § 246; Laws 2007, LB296, § 726; Laws 2007, LB334, § 102.
Operative date July 1, 2007.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 726, with LB 334, section 102, to reflect all amendments.

Cross Reference

Department of Administrative Services, see section 81-1103.

Department of Aeronautics, see section 3-103.

Department of Correctional Services, see section 83-171.

Department of Economic Development, see section 81-1201.02.

Department of Environmental Quality, see section 81-1502.

Department of Health and Human Services, see section 81-3113.

Department of Revenue, see section 77-360.

Department of Veterans' Affairs, see section 80-401.02.

Military Department, see section 55-120.

Nebraska State Patrol, see section 81-2001.

State Department of Education, see section 79-301 and Article VII, section 2, Constitution of Nebraska.

81-102 Department heads; enumeration; appointment and confirmation; removal. The Governor shall appoint heads for the various agencies listed in section 81-101, subject to confirmation by a majority vote of the members elected to the Legislature. Such appointments shall be submitted to the Legislature within sixty calendar days following the first Thursday after the first Tuesday in each odd-numbered year. The officers shall be designated as follows: (1) The Director of Agriculture for the Department of Agriculture; (2) the Commissioner of Labor for the Department of Labor; (3) the Director-State Engineer for the Department of Roads; (4) the Director of Natural Resources for the Department of Natural Resources; (5) the Director of Banking and Finance for the Department of Banking and Finance; (6) the Director of Insurance for the Department of Insurance; (7) the Director of Motor Vehicles for the Department of Motor Vehicles; (8) the Director of Administrative Services for the Department of Administrative Services; (9) the Director of Correctional Services for the Department of Correctional Services; (10) the Director of Economic Development for the Department of Economic Development; (11) the Superintendent of Law Enforcement and Public Safety for the Nebraska State Patrol; (12) the Property Tax Administrator as the chief administrative officer of the property assessment division of the Department of Revenue; and (13) the chief executive officer for the Department of Health and Human Services. Whoever shall be so nominated by the Governor and shall fail to receive the number of votes requisite for confirmation, shall not be subject to nomination or appointment for this or any other appointive state office requiring confirmation by the Legislature during the period for which his or her appointment was sought. In case of a vacancy in any of such offices during the recess of the Legislature, the Governor shall make a temporary appointment until the next meeting of the Legislature, when he or she shall nominate some person to fill such office. Any person so nominated who is confirmed by the Legislature, shall hold his or her office during the remainder of the term if a specific term has been provided by law, otherwise during the pleasure of the Governor subject to the provisions of this section; except any such officers may be removed by the Governor pursuant to Article IV of the Constitution of Nebraska.

Source: Laws 1929, c. 51, § 2, p. 209; C.S.1929, § 81-102; Laws 1933, c. 149, § 2, p. 571; Laws 1941, c. 177, § 1, p. 695; C.S.Supp.,1941, § 81-102; R.S.1943, § 81-102; Laws 1953, c. 335, § 1, p. 1100; Laws 1957, c. 365, § 9, p. 1237; Laws 1957, c. 366, § 52, p. 1282; Laws 1961, c. 415, § 30, p. 1260; Laws 1961, c. 416, § 10, p. 1268; Laws 1963, c. 504, § 2, p. 1609; Laws 1969, c. 778, § 2, p. 2950; Laws 1969, c. 514, § 4, p. 2105; Laws 1973, LB 563, § 17; Laws 1976, LB 561, § 5; Laws 1981, LB 249, § 4; Laws 1981, LB 541, § 5; Laws 1982, LB 404, § 34; Laws 1996, LB 1044, § 836; Laws 1999, LB 36, § 36; Laws 2000, LB 900, § 247; Laws 2007, LB296, § 727; Laws 2007, LB334, § 103.
Operative date July 1, 2007.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 296, section 727, with LB 334, section 103, to reflect all amendments.

81-109 Department heads; serve without term; exception. Each head of a department shall serve without term.

Source: Laws 1919, c. 190, § 8, p. 438; C.S.1922, § 7249; C.S.1929, § 81-111; R.S.1943, § 81-109; Laws 1963, c. 335, § 4, p. 1101; Laws 1953, c. 506, § 1, p. 1613; Laws 1963, c. 507, § 2, p. 1614; Laws 1965, c. 543, § 2, p. 1730; Laws 1981, LB 249, § 6; Laws 1999, LB 36, § 37; Laws 2007, LB334, § 104.
Operative date July 1, 2007.

(d) MATERIEL DIVISION OF ADMINISTRATIVE SERVICES

81-154 Materiel division; standard specifications; establish and maintain; cooperation of using agencies; competitive bids. The materiel division shall establish and maintain standard specifications for personal property purchased in the name of the state. The materiel division shall enlist the cooperation and assistance of the using agencies in the establishment, maintenance, and revision of standard specifications and shall encourage and foster the use of standard specifications in order that the most efficient purchase of personal property may be continuously accomplished. All such standard specifications shall be so drawn that it will be possible for three or more manufacturers, vendors, or suppliers to submit competitive bids. If a requisition for personal property exceeds twenty-five thousand dollars and bids cannot be obtained from three bidders, then the standard specifications of the personal property upon which bids are sought shall be reviewed by the materiel division and the using agencies involved. If it is determined by the materiel division, because of the special nature of the personal property sought to be purchased or leased or for any other reason, that the standard specifications should remain as written, bids may be accepted from a fewer number of bidders than three with the approval of the Governor or his or her designated representative.

Source: Laws 1943, c. 215, § 10, p. 707; R.S.1943, § 81-154; Laws 1963, c. 508, § 7, p. 1618; Laws 1975, LB 359, § 6; Laws 1981, LB 381, § 3; Laws 1984, LB 933, § 12; Laws 1992, LB 1241, § 15; Laws 1997, LB 314, § 5; Laws 2000, LB 654, § 10; Laws 2007, LB256, § 4.
Effective date September 1, 2007.

81-161.03 Direct purchases, contracts, or leases; approval required, when; report required; materiel division; duties; Department of Correctional Services; purchases authorized. The materiel division may, by written order, permit purchases, contracts, or

leases to be made by any using agency directly with the vendor or supplier whenever it appears to the satisfaction of the materiel division that, because of the unique nature of the personal property, the price in connection therewith, the quantity to be purchased, the location of the using agency, the time of the use of the personal property, or any other circumstance, the interests of the state will be served better by purchasing or contracting direct than through the materiel division.

Such permission shall be revocable and shall be operative for a period not exceeding twelve months from the date of issue. Using agencies receiving such permission shall report their acts and expenditures under such orders to the materiel division in writing and furnish such agent with proper evidence that competition has been secured at such time and covering such period as may be required by the materiel division.

The materiel division shall adopt and promulgate rules and regulations establishing criteria which must be met by any agency seeking direct market purchase authorization. Purchases for miscellaneous needs may be made directly by any agency without prior approval from the materiel division for purchases of less than ten thousand dollars if the agency has completed a certification program as prescribed by the materiel division.

The Department of Correctional Services may purchase raw materials, supplies, component parts, and equipment perishables directly for industries established pursuant to section 83-183, whether such purchases are made to fill specific orders or for general inventories. Any such purchase shall not exceed twenty-five thousand dollars. The department shall comply with the bidding process of the materiel division and shall be subject to audit by the materiel division for such purchases.

Source: Laws 1943, c. 215, § 16, p. 709; R.S.1943, § 81-160; Laws 1963, c. 508, § 12, p. 1620; Laws 1975, LB 359, § 9; Laws 1975, LB 447, § 5; Laws 1981, LB 381, § 7; Laws 1984, LB 933, § 13; Laws 1987, LB 354, § 1; Laws 1992, LB 1241, § 18; Laws 1997, LB 314, § 6; Laws 2000, LB 654, § 16; Laws 2007, LB256, § 5.
Effective date September 1, 2007.

(f) DEFERRED BUILDING RENEWAL AND MAINTENANCE

81-179 Building Renewal Allocation Fund; created; use; investment. (1) There is hereby created under the control of the Governor, for allocation to building renewal projects of the various agencies, a fund to be known as the Building Renewal Allocation Fund. The fund shall contain the revenue from the special privilege tax as provided in section 77-2602 and such other money as is appropriated by the Legislature. Such appropriation is declared to consist of building renewal funds which shall be kept separate and distinct from the program continuation funds and project construction funds.

(2) Separate subfunds, subprograms, projects, or accounts shall be established to separately account for any expenditures on state buildings or facilities to comply with the federal Americans with Disabilities Act of 1990. A minimal amount of the funds contained in the subfunds, subprograms, projects, or accounts may be used for planning and evaluation of buildings and facilities.

(3) The budget division of the Department of Administrative Services may administratively transfer funds to appropriate accounting entities to correctly account for the operating expenditures. A separate fund, cash fund, project, or other account may be administratively established for such purpose.

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

Source: Laws 1977, LB 309, § 7; Laws 1993, LB 369, § 3; Laws 1994, LB 1066, § 96; Laws 1995, LB 530, § 2; Laws 1996, LB 1190, § 16; Laws 1998, LB 1100, § 15; Laws 2000, LB 1349, § 2; Laws 2002, LB 1310, § 11; Laws 2003, LB 410, § 1; Laws 2004, LB 1090, § 1; Laws 2007, LB323, § 2.
Operative date July 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.

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

81-188.02 State Building Renewal Assessment Fund; capital improvement project; depreciation charges. (1) For purposes of this section, capital improvement project means (a) construction of a new facility, structure, or building, (b) construction of additions to an existing facility, structure, or building, (c) renovation of an existing facility, structure, or building if the total project cost of such renovation represents not less than fifteen percent of the value of the existing facility, structure, or building as determined by the Department of Administrative Services, (d) purchase of an existing facility, structure, or building, and (e) acquisition of a facility, structure, or building through means of conveyance other than sale and purchase.

(2) Beginning with the fiscal year that commences subsequent to the calendar year in which has occurred substantial completion of a capital improvement project as defined in subdivisions (1)(a) through (1)(c) of this section or acquisition of a capital improvement project as defined in subdivisions (1)(d) and (1)(e) of this section, the department shall assess a capital improvement depreciation charge to the agency maintaining ownership or control of the related facility, structure, or building and shall assess such charge for each fiscal year thereafter.

(3) The annual depreciation charge for a capital improvement project as defined in subdivisions (1)(a) through (1)(c) of this section shall be computed as one percent of the total project cost of the capital improvement project. The annual depreciation charge for a capital improvement project as defined in subdivision (1)(d) of this section shall be computed as one percent of the greater of the purchase price or the value, as determined by the department, of the capital improvement project at the time of acquisition. The annual depreciation charge for a capital improvement project as defined in subdivision (1)(e) of this section shall be computed as one percent of the value, as determined by the department, of the capital improvement project at the time of acquisition. The department may assess the charge annually or in monthly, quarterly, or semiannual installments.

(4) Depreciation charges shall not be assessed pursuant to this section for capital improvement projects relating to facilities, structures, or buildings owned, leased, or

operated by the: (i) University of Nebraska; (ii) Nebraska state colleges; (iii) Department of Aeronautics; (iv) Department of Roads; (v) Game and Parks Commission; or (vi) Board of Educational Lands and Funds or to other buildings or grounds owned, leased, or operated by the State of Nebraska which are specifically exempted by the Department of Administrative Services because the assessment of such depreciation charges would result in the ineligibility for federal funding or would result in hardship on an agency, board, or commission due to other exceptional or unusual circumstances. Depreciation charges shall not be assessed pursuant to this section for capital improvement projects relating to facilities, structures, or buildings of which the department is custodian pursuant to section 81-1108.17 and for which charges are assessed pursuant to subdivision (4)(b) of such section.

(5) Payment of depreciation charges assessed pursuant to this section shall be remitted to the State Treasurer for credit to the State Building Renewal Assessment Fund.

Source: Laws 1998, LB 1100, § 9; Laws 2001, LB 666, § 1; Laws 2002, LB 1310, § 14; Laws 2003, LB 410, § 5; Laws 2004, LB 439, § 16; Laws 2004, LB 1092, § 3; Laws 2007, LB322, § 21.
Operative date July 1, 2007.

81-188.04 University Building Renewal Assessment Fund; capital improvement project; depreciation charges. (1) For purposes of this section, capital improvement project means (a) construction of a new facility, structure, or building, (b) construction of additions to an existing facility, structure, or building, (c) renovation of an existing facility, structure, or building if the total project cost of such renovation represents not less than fifteen percent of the value of the existing facility, structure, or building as determined by the Department of Administrative Services, (d) purchase of an existing facility, structure, or building, and (e) acquisition of a facility, structure, or building through means of conveyance other than sale and purchase.

(2) Beginning with the fiscal year that commences subsequent to the calendar year in which has occurred substantial completion of a capital improvement project by the University of Nebraska as defined in subdivisions (1)(a) through (1)(c) of this section or acquisition of a capital improvement project by the University of Nebraska as defined in subdivisions (1)(d) and (1)(e) of this section, the department shall assess a capital improvement depreciation charge to the Board of Regents of the University of Nebraska and shall assess such charge for each fiscal year thereafter.

(3) The annual depreciation charge for a capital improvement project as defined in subdivisions (1)(a) through (1)(c) of this section shall be computed as one percent of the total project cost of the capital improvement project. The annual depreciation charge for a capital improvement project as defined in subdivision (1)(d) of this section shall be computed as one percent of the greater of the purchase price or the value, as determined by the department, of the capital improvement project at the time of acquisition. The annual depreciation charge for a capital improvement project as defined in subdivision (1)(e) of this section shall be computed as one percent of the value, as determined by the department, of the capital

improvement project at the time of acquisition. The department may assess the charge annually or in monthly, quarterly, or semiannual installments.

(4) Depreciation charges shall not be assessed pursuant to this section for capital improvement projects relating to facilities, structures, or buildings from which revenue is derived and pledged for the retirement of revenue bonds issued under sections 85-403 to 85-411.

(5) Payment of depreciation charges assessed pursuant to this section shall be remitted to the State Treasurer for credit to the University Building Renewal Assessment Fund.

Source: Laws 1998, LB 1100, § 11; Laws 2002, LB 1310, § 16; Laws 2003, LB 410, § 7; Laws 2004, LB 1092, § 5; Laws 2007, LB322, § 22.
Operative date July 1, 2007.

81-188.06 State College Building Renewal Assessment Fund; capital improvement project; depreciation charges. (1) For purposes of this section, capital improvement project means (a) construction of a new facility, structure, or building, (b) construction of additions to an existing facility, structure, or building, (c) renovation of an existing facility, structure, or building if the total project cost of such renovation represents not less than fifteen percent of the value of the existing facility, structure, or building as determined by the Department of Administrative Services, (d) purchase of an existing facility, structure, or building, and (e) acquisition of a facility, structure, or building through means of conveyance other than sale and purchase.

(2) Beginning with the fiscal year that commences subsequent to the calendar year in which has occurred substantial completion of a capital improvement project by the Nebraska state colleges as defined in subdivisions (1)(a) through (1)(c) of this section or acquisition of a capital improvement project by the Nebraska state colleges as defined in subdivisions (1)(d) and (1)(e) of this section, the department shall assess a depreciation charge to the Board of Trustees of the Nebraska State Colleges and shall assess such charge for each fiscal year thereafter.

(3) The annual depreciation charge for a capital improvement project as defined in subdivisions (1)(a) through (1)(c) of this section shall be computed as one percent of the total project cost of the capital improvement project. The annual depreciation charge for a capital improvement project as defined in subdivision (1)(d) of this section shall be computed as one percent of the greater of the purchase price or the value, as determined by the department, of the capital improvement project at the time of acquisition. The annual depreciation charge for a capital improvement project as defined in subdivision (1)(e) of this section shall be computed as one percent of the value, as determined by the department, of the capital improvement project at the time of acquisition. The department may assess the charge annually or in monthly, quarterly, or semiannual installments.

(4) Depreciation charges shall not be assessed pursuant to this section for capital improvement projects relating to facilities, structures, or buildings from which revenue is derived and pledged for the retirement of revenue bonds issued under sections 85-403 to 85-411.

(5) Payment of depreciation charges assessed pursuant to this section shall be remitted to the State Treasurer for credit to the State College Building Renewal Assessment Fund.

Source: Laws 1998, LB 1100, § 13; Laws 2002, LB 1310, § 18; Laws 2003, LB 410, § 9; Laws 2004, LB 1092, § 7; Laws 2007, LB322, § 23.
Operative date July 1, 2007.

ARTICLE 2

DEPARTMENT OF AGRICULTURE

(x) NEBRASKA PURE FOOD ACT

Section.

- 81-2,239. Nebraska Pure Food Act; provisions included; how cited.
- 81-2,244.01. Food Code, defined.
- 81-2,248. Itinerant food vendor, defined.
- 81-2,257. Critical violations; designation.
- 81-2,270. Food establishment, food processing plant, or salvage operation; permits; application; contents; fees; late fee; exemptions.
- 81-2,272.03. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.04. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.05. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.06. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.10. Food employees; hand washing; food contact; restrictions.
- 81-2,272.14. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.15. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.16. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.17. Person in charge; raw or undercooked animal foods; consumer advisory requirements.
- 81-2,272.19. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.20. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.21. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.22. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.23. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.24. Potentially hazardous food; date marking; sale, consumption, or discard requirements.
- 81-2,272.25. Potentially hazardous food; discard; when.
- 81-2,272.26. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.28. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.29. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.30. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.33. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.35. Repealed. Laws 2007, LB 74, § 12.
- 81-2,272.37. Repealed. Laws 2007, LB 74, § 12.

81-2,281. Department; enforce act; contract for conduct of certain regulatory functions; exemption from inspection fee; inspections; how conducted; by whom.

(x) NEBRASKA PURE FOOD ACT

81-2,239 Nebraska Pure Food Act; provisions included; how cited. Sections 81-2,239 to 81-2,292 and the provisions of the Food Code, the Food Salvage Code, and the Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food adopted by reference in sections 81-2,257.01 to 81-2,259, shall be known and may be cited as the Nebraska Pure Food Act.

Source: Laws 1981, LB 487, § 5; Laws 1989, LB 548, § 3; R.S.Supp.,1990, § 81-216.01; Laws 1991, LB 358, § 8; Laws 1992, LB 366, § 55; Laws 1997, LB 199, § 3; Laws 1999, LB 474, § 1; Laws 2003, LB 250, § 3; Laws 2004, LB 1045, § 1; Laws 2005, LB 131, § 1; Laws 2007, LB74, § 1.
Operative date July 1, 2007.

81-2,244.01 Food Code, defined. Food Code shall mean the 2005 Recommendations of the United States Public Health Service, Food and Drug Administration, except the definitions of adulterated food and food establishment and sections 2-102.11, 2-103.11(H) and (K), 3-201.11(E), 3-301.11, 3-304.13, 3-401.11(C)(2) and (D)(2), 3-404.11(A), 3-501.17, 3-501.18, 3-502.11, 3-502.12, 3-603.11, 4-204.117, 4-301.12(C)(5), (D), and (E), 4-302.12(B), 4-603.16(C), 4-802.11(C), 5-103.12, 5-104.11, 6-301.14, 8-101, 8-102, 8-201.11, 8-201.12, 8-201.13(A)(2) and (3) and (B), 8-201.14(C), 8-202 through 8-304, 8-401.10(B)(2), 8-402.20 through 8-403.20, 8-403.50 through 8-404.12, and 8-405.20(B). The term Food Code does not include the annexes of such federal recommendations.

Source: Laws 1997, LB 199, § 8; Laws 1999, LB 474, § 3; Laws 2003, LB 250, § 4; Laws 2007, LB74, § 2.
Operative date July 1, 2007.

81-2,248 Itinerant food vendor, defined. Itinerant food vendor shall mean a person that sells prepackaged, potentially hazardous food from an approved source at a nonpermanent location such as a farmers market, craft show, or county fair.

Source: Laws 2007, LB74, § 3.
Operative date July 1, 2007.

81-2,257 Critical violations; designation. Critical violations are designated in the Food Code and sections 81-2,272.02, 81-2,272.10, 81-2,272.17, 81-2,272.24, 81-2,272.25, 81-2,272.27, and 81-2,272.36 and subdivision (4) of section 81-2,272.31.

Source: Laws 1999, LB 474, § 19; Laws 2003, LB 250, § 6; Laws 2007, LB74, § 4.
Operative date July 1, 2007.

81-2,270 Food establishment, food processing plant, or salvage operation; permits; application; contents; fees; late fee; exemptions. (1) No person shall operate: (a) A food establishment; (b) a food processing plant; or (c) a salvage operation, without a valid permit which sets forth the types of operation occurring within the establishment.

(2) Application for a permit shall be made to the director on forms prescribed and furnished by the department. Such application shall include the applicant's full name and mailing

address, the names and addresses of any partners, members, or corporate officers, the name and address of the person authorized by the applicant to receive the notices and orders of the department as provided in the Nebraska Pure Food Act, whether the applicant is an individual, partnership, limited liability company, corporation, or other legal entity, the location and type of proposed establishment or operation, and the signature of the applicant. Application for a permit shall be made prior to the operation of a food establishment, food processing plant, or salvage operation. The application shall be accompanied by an initial permit fee and an initial inspection fee in the same amount as the annual inspection fee if inspections are required to be done by the department. If the food establishment, food processing plant, or salvage operation has been in operation prior to applying for a permit, the applicant shall pay an additional fee of sixty dollars.

(3) Payment of the initial permit fee, the initial inspection fee, and the fee for failing to apply for a permit prior to operation shall not preclude payment of the annual inspection fees due on August 1 of each year. Except as provided in subsections (7) through (10) of this section and subsection (1) of section 81-2,281, a permitholder shall pay annual inspection fees on or before August 1 of each year.

(4)(a) The director shall set the initial permit fee and the annual inspection fees on or before July 1 of each fiscal year to meet the criteria in this subsection. The director may raise or lower the fees each year, but the fees shall not exceed the maximum fees listed in subdivision (4)(b) of this section. The director shall determine the fees based on estimated annual revenue and fiscal year-end cash fund balance as follows:

(i) The estimated annual revenue shall not be greater than one hundred seven percent of program cash fund appropriations allocated for the Nebraska Pure Food Act;

(ii) The estimated fiscal year-end cash fund balance shall not be greater than seventeen percent of program cash fund appropriations allocated for the act; and

(iii) All fee increases or decreases shall be equally distributed between all categories.

(b) The maximum fees are:

	Initial	First Food Preparation Area Annual Inspection Fee	Additional Food Preparation Area Annual Inspection Fee (per area)	Unit Or Units Annual Inspection Fee
Food Handling Activity				
Convenience Store	\$74.36	\$74.36	\$37.18	N/A
Itinerant Food Vendor	\$74.36	\$74.36	\$37.18	N/A
Licensed Beverage Establishment	\$74.36	\$74.36	\$37.18	N/A
Limited Food Service Establishment	\$74.36	\$74.36	\$37.18	N/A

Temporary Food Establishment	\$74.36	\$74.36	\$37.18	N/A
Mobile Food Unit (for each unit)	\$74.36	N/A	N/A	\$37.18
Pushcart (for each unit)	\$74.36	N/A	N/A	\$14.87
Vending Machine Operations:	\$74.36			
One to ten units		N/A	N/A	\$14.87
Eleven to twenty units		N/A	N/A	\$29.74
Twenty-one to thirty units		N/A	N/A	\$44.61
Thirty-one to forty units		N/A	N/A	\$59.48
Over forty units		N/A	N/A	\$74.34
Food Processing Plant	\$74.36	\$104.12	\$37.18	N/A
Salvage Operation	\$74.36	\$104.12	\$37.18	N/A
Commissary	\$74.36	\$104.12	\$37.18	N/A
All Other Food Establishments	\$74.36	\$104.12	\$37.18	N/A

(5) If a food establishment is engaged in more than one food handling activity listed in subsection (4) of this section, the inspection fee charged shall be based upon the primary activity conducted within the food establishment as determined by the department and any fees assessed for each additional food preparation area within the primary establishment as determined by the department.

(6) If a person fails to pay the inspection fee for more than one month after the fee is due, such person shall pay a late fee equal to fifty percent of the total fee for the first month that the fee is late and one hundred percent for the second month that the fee is late. The purpose of the late fee is to cover the administrative costs associated with collecting fees. All money collected as a late fee shall be remitted to the State Treasurer for credit to the Pure Food Cash Fund.

(7) An educational institution, health care facility, nursing home, or governmental organization operating any type of food establishment, other than a mobile food unit or pushcart, is exempt from the requirements in subsections (1) through (6) of this section.

(8) A person whose primary food-related business activity is determined by the department to be egg handling within the meaning of the Nebraska Graded Egg Act and who is validly licensed and paying fees pursuant to such act is exempt from the permit and inspection fee requirements of the Nebraska Pure Food Act.

(9) A person holding a permit or license and regulated under the Nebraska Milk Act and an egg handler licensed and regulated under the Nebraska Graded Egg Act are exempt from the Nebraska Pure Food Act.

(10) A single event food vendor or a religious, charitable, or fraternal organization operating any type of temporary food establishment, mobile food unit, or pushcart is exempt from the requirements of subsections (1) through (6) of this section. Any such organization operating any nontemporary food establishment prior to July 1, 1985, is exempt from the requirements of subsection (2) of this section.

Source: Laws 1981, LB 487, § 25; Laws 1982, LB 547, § 15; Laws 1985, LB 460, § 9; R.S.1943, (1987), § 81-216.21; Laws 1991, LB 358, § 39; Laws 1993, LB 121, § 526; Laws 1997, LB 199, § 23; Laws 1999, LB 474, § 10; Laws 2003, LB 250, § 8; Laws 2004, LB 1045, § 5; Laws 2007, LB74, § 5; Laws 2007, LB111, § 29.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB 74, section 5, with LB 111, section 29, to reflect all amendments.

Note: The changes made by LB 74 became operative July 1, 2007. The changes made by LB 111 became effective September 1, 2007.

Cross Reference

Nebraska Graded Egg Act, see section 2-3525.

Nebraska Milk Act, see section 2-3965.

81-2,272.03 Repealed. Laws 2007, LB 74, § 12.

81-2,272.04 Repealed. Laws 2007, LB 74, § 12.

81-2,272.05 Repealed. Laws 2007, LB 74, § 12.

81-2,272.06 Repealed. Laws 2007, LB 74, § 12.

81-2,272.10 Food employees; hand washing; food contact; restrictions. (1) Food employees shall wash their hands as specified in the Nebraska Pure Food Act.

(2) Food employees shall be trained to wash their hands as specified in the act.

(3) Except when washing fruits and vegetables, food employees shall minimize bare hand and arm contact with exposed food. This may be accomplished with the use of suitable utensils such as deli tissues, spatulas, tongs, single-use gloves, or dispensing equipment.

(4) Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if they have washed their hands as specified in the act prior to handling the food.

Source: Laws 1997, LB 199, § 35; Laws 2003, LB 250, § 9; Laws 2007, LB74, § 6.
Operative date July 1, 2007.

81-2,272.14 Repealed. Laws 2007, LB 74, § 12.

81-2,272.15 Repealed. Laws 2007, LB 74, § 12.

81-2,272.16 Repealed. Laws 2007, LB 74, § 12.

81-2,272.17 Person in charge; raw or undercooked animal foods; consumer advisory requirements. The person in charge of a food establishment shall ensure that consumers who order raw or partially cooked foods of animal origin are informed that the food is not cooked sufficiently to assure its safety. If a raw or undercooked animal food such as beef, eggs, fish, lamb, pork, poultry, or shellfish is offered in a ready-to-eat form as a deli, menu, vended, or other item, or as a raw ingredient in another ready-to-eat form, the permitholder shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards, or other written means of the significantly increased risk associated with certain especially vulnerable consumers eating such foods in a raw or undercooked form. The following language will satisfy the consumer advisory requirements:

"Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry, or shellfish reduces the risk of foodborne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information."

Source: Laws 1997, LB 199, § 42; Laws 2007, LB74, § 7.
Operative date July 1, 2007.

81-2,272.19 Repealed. Laws 2007, LB 74, § 12.

81-2,272.20 Repealed. Laws 2007, LB 74, § 12.

81-2,272.21 Repealed. Laws 2007, LB 74, § 12.

81-2,272.22 Repealed. Laws 2007, LB 74, § 12.

81-2,272.23 Repealed. Laws 2007, LB 74, § 12.

81-2,272.24 Potentially hazardous food; date marking; sale, consumption, or discard requirements. (1) Except when packaging food using a reduced oxygen packaging method as specified in section 81-2,272.27 and except as specified in this section, refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety food) prepared and held in a food establishment for more than twenty-four hours shall be clearly marked to indicate the date of preparation. The food shall be sold, consumed on the premises, or discarded within:

(a) Seven calendar days or less if the food is held refrigerated at forty-one degrees Fahrenheit (five degrees Celsius) or below; or

(b) Four calendar days or less if the food is held refrigerated between forty-five degrees Fahrenheit (seven degrees Celsius) and forty-one degrees Fahrenheit (five degrees Celsius).

(2) Except as specified in this section, refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety food) prepared and packaged by a food processing plant and held refrigerated at such food establishment, shall be clearly marked, at the time the original container is opened in a food establishment, to indicate the date the food container was opened. The food shall be sold, consumed on the premises, or discarded within:

(a) Seven calendar days or less if the food is held refrigerated at forty-one degrees Fahrenheit (five degrees Celsius) or below; or

(b) Four calendar days or less if the food is held refrigerated between forty-five degrees Fahrenheit (seven degrees Celsius) and forty-one degrees Fahrenheit (five degrees Celsius).

This subsection does not apply to fermented sausages which retain an original casing or shelf stable salt-cured products produced in a federally inspected food processing plant that are not labeled "Keep Refrigerated" or to shelf stable, dry, fermented sausages when the face has been cut, but the remaining portion is whole and intact.

(3) A refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety food) ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety food) that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient.

(4) A date marking system that meets the criteria stated in subsections (1) and (2) of this section may include:

(a) Using a method approved by the regulatory authority for refrigerated, ready-to-eat, potentially hazardous food (time and temperature control for safety food) that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine;

(b) Marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under subsection (1) of this section;

(c) Marking the date or day the original container is opened in a food establishment, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under subsection (2) of this section; or

(d) Using calendar dates, days of the week, color-coded marks, or other effective marking methods, if the marking system is disclosed to the regulatory authority upon request.

(5) Subsections (1) and (2) of this section do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.

(6) Subsection (2) of this section does not apply to the following foods prepared and packaged by a food processing plant inspected by a regulatory authority:

(a) Deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad manufactured in accordance with 21 C.F.R. part 110, Current Good Manufacturing Practice In Manufacturing, Packing, or Holding Human Food, as such part existed on January 1, 2007;

(b) Hard cheeses containing not more than thirty-nine percent moisture as defined in 21 C.F.R. part 133, Cheeses and related cheese products, as such part existed on January 1, 2007, such as cheddar, gruyere, parmesan and reggiano, and romano;

(c) Semi-soft cheeses containing more than thirty-nine percent moisture, but not more than fifty percent moisture, as defined in 21 C.F.R. part 133, Cheeses and related cheese products, as such part existed on January 1, 2007, such as blue, edam, gorgonzola, gouda, and monterey jack;

(d) Cultured dairy products as defined in 21 C.F.R. part 131, Milk and cream, as such part existed on January 1, 2007, such as yogurt, sour cream, and buttermilk;

(e) Preserved fish products, such as pickled herring and dried or salted cod and other acidified fish products, as defined in 21 C.F.R. part 114, Acidified foods, as such part existed on January 1, 2007;

(f) Shelf stable, dry fermented sausages, such as pepperoni and Genoa salami that are not labeled "Keep Refrigerated" as specified in 9 C.F.R. part 317, Labeling, marking devices, and containers, as such part existed on January 1, 2007, and which retain the original casing on the product; and

(g) Shelf stable salt-cured products such as prosciutto and Parma (ham) that are not labeled "Keep Refrigerated" as specified in 9 C.F.R. part 317, Labeling, marking devices, and containers, as such part existed on January 1, 2007.

Source: Laws 1997, LB 199, § 49; Laws 1999, LB 474, § 14; Laws 2003, LB 250, § 15; Laws 2007, LB74, § 8.
Operative date July 1, 2007.

81-2,272.25 Potentially hazardous food; discard; when. (1) A food specified under subsections (1) and (2) of section 81-2,272.24 shall be discarded if such food:

(a) Exceeds either of the temperature and time combinations specified in subsection (1) of section 81-2,272.24, except time that the food is frozen;

(b) Is in a container or package that does not bear a date or day; or

(c) Is appropriately marked with a date or day that exceeds a temperature and time combination as specified in subsection (1) of section 81-2,272.24.

(2) Refrigerated, ready-to-eat, potentially hazardous food prepared in a food establishment and dispensed through a vending machine with an automatic shut-off control shall be discarded if it exceeds a temperature and time combination as specified in subsection (1) of section 81-2,272.24.

Source: Laws 1997, LB 199, § 50; Laws 2003, LB 250, § 16; Laws 2007, LB74, § 9.
Operative date July 1, 2007.

81-2,272.26 Repealed. Laws 2007, LB 74, § 12.

81-2,272.28 Repealed. Laws 2007, LB 74, § 12.

81-2,272.29 Repealed. Laws 2007, LB 74, § 12.

81-2,272.30 Repealed. Laws 2007, LB 74, § 12.

81-2,272.33 Repealed. Laws 2007, LB 74, § 12.

81-2,272.35 Repealed. Laws 2007, LB 74, § 12.

81-2,272.37 Repealed. Laws 2007, LB 74, § 12.

81-2,281 Department; enforce act; contract for conduct of certain regulatory functions; exemption from inspection fee; inspections; how conducted; by whom. (1)

The department shall enforce the Nebraska Pure Food Act. The department may contract with any political subdivision or state agency it deems qualified to conduct any or all regulatory functions authorized pursuant to the act except those functions relating to the issuance, suspension, or revocation of permits or any order of probation. Holders of permits issued pursuant to the act who are regularly inspected by political subdivisions under contract with the department shall be exempt from the inspection fees prescribed in section 81-2,270 if such holders pay license or inspection fees to the political subdivision performing the inspections.

(2) It shall be the responsibility of the regulatory authority to inspect food establishments and food processing plants as often as required by the act. An inspection of a salvage operation shall be performed at least once every three hundred sixty-five days of operation. Additional inspections shall be performed as often as is necessary for the efficient and effective enforcement of the act.

(3) All inspections conducted pursuant to the act shall be performed by persons who are provisional environmental health specialists or registered environmental health specialists as defined in section 38-1305 or 38-1306.

(4) Duly authorized personnel of the regulatory authority after showing proper identification shall have access at all reasonable times to food establishments, food processing plants, or salvage operations required by the act to obtain a permit to perform authorized regulatory functions. Such functions shall include, but not be limited to, inspections, checking records maintained in the establishment or other locations to obtain information pertaining to food and supplies purchased, received, used, sold, or distributed, copying and photographing violative conditions, and examining and sampling food. When samples are taken, the inspectors shall pay or offer to pay for samples taken. The authorized personnel shall also have access to the records of salvage operations pertaining to distressed salvageable and salvaged merchandise purchased, received, used, sold, or distributed.

(5) Regulatory activities performed by a political subdivision or state agency under contract shall conform with the provisions of the act and such activities shall have the same effect as those performed by the department. Any interference with the regulatory authority's duty to inspect shall be an interference with the department's duties for the purposes of section 81-2,273.

Source: Laws 1981, LB 487, § 31; Laws 1991, LB 703, § 66; R.S.1943, (1987), § 81-216.27; Laws 1991, LB 358, § 50; Laws 1997, LB 199, § 58; Laws 1999, LB 474, § 16; Laws 2007, LB463, § 1311. Operative date December 1, 2008.

ARTICLE 4

DEPARTMENT OF LABOR

Section.

81-405. Mechanical Safety Inspection Fund; created; use; investment.

81-405 Mechanical Safety Inspection Fund; created; use; investment. The Mechanical Safety Inspection Fund is created. All fees collected by the Department of Labor pursuant to the Nebraska Amusement Ride Act and the Conveyance Safety Act shall be remitted to the State Treasurer for credit to the Mechanical Safety Inspection Fund. Fees so collected shall not lapse into the General Fund. Fees so collected shall be used for the sole purpose of administering the provisions of the Nebraska Amusement Ride Act and the Conveyance Safety Act. Any money in the Mechanical Safety Inspection 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. All funds existing in the Elevator Inspection Fund and the Nebraska Amusement Ride Fund on January 1, 2008, shall be transferred to the Mechanical Safety Inspection Fund.

Source: Laws 2007, LB265, § 24.
Operative date January 1, 2008.

Cross Reference

Conveyance Safety Act, see section 48-2501.
Nebraska Amusement Ride Act, see section 48-1801.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 5

STATE FIRE MARSHAL

(b) GENERAL PROVISIONS

Section.

81-502. State Fire Marshal; fire prevention and safety; duties; delegation of authority to local fire prevention personnel; rules and regulations; compliance; late penalty.
81-502.01. Nebraska Fire Safety Appeals Board; members; appointment; qualifications; term.
81-523. State Fire Marshal; office; support and maintenance; tax on fire insurance companies; rate.

(i) TRAINING DIVISION

81-5,153. Training Division Cash Fund; created; use; investment.

(b) GENERAL PROVISIONS

81-502 State Fire Marshal; fire prevention and safety; duties; delegation of authority to local fire prevention personnel; rules and regulations; compliance; late penalty. (1) It shall be the duty of the State Fire Marshal, under authority of the Governor:

(a) To enforce all laws of the state relating to the suppression of arson and investigation of the cause, origin, and circumstances of fires;

(b) To promote safety and reduce loss by fire;

(c) To make an investigation for fire safety of the premises and facilities of:

(i) Liquor establishments for which a license or renewal of a license is sought, upon request of the Nebraska Liquor Control Commission, pursuant to section 53-119.01;

(ii) Licensed foster care facilities or applicants for licenses for foster care facilities, upon request by the Department of Health and Human Services, pursuant to section 71-1903;

(iii) Licensed providers of programs or applicants for licenses to provide such programs, upon request of the Department of Health and Human Services, pursuant to section 71-1913. The State Fire Marshal shall report the results of the investigation to the department within thirty days after receipt of the request from the department;

(iv) Licensed hospitals, skilled nursing facilities, intermediate care facilities, or other health care facilities which are licensed under the Health Care Facility Licensure Act or applicants for licenses for such facilities or institutions, upon request by the Department of Health and Human Services, pursuant to section 71-441; and

(v) Mobile home parks for which a license or renewal of a license is sought, upon request of the Department of Health and Human Services, pursuant to section 71-4635; and

(d) After a careful study and investigation of relevant data, to adopt, promulgate, alter, and enforce, through inspections and code compliance, orders, rules, and regulations covering:

(i) The prevention of fires;

(ii) The storage, sale, and use of flammable liquids, combustibles, and fireworks;

(iii) Electric wiring and heating, protection equipment devices, materials, furnishings, and other safeguards within the structure necessary to promote safety and reduce loss by fire, and the means and adequacy of exits, in case of fire, in assembly, educational, institutional, residential, mercantile, office, storage, and industrial-type occupancies as such structures are defined in the National Fire Protection Association, Pamphlet Number 101, and associated pamphlets, and all other buildings, structures, and enclosures in which numbers of persons congregate from time to time for any purpose whether privately or publicly owned;

(iv) Design, construction, location, installation, and operation of equipment for storing, handling, and utilization of liquefied petroleum gases, specifying the odorization of such gases and the degree thereof;

(v) Chemicals, prozylin plastics, X-ray nitrocellulose films, or any other hazardous material that may now or hereafter exist;

(vi) Tanks used for the storage of regulated substances pursuant to the Petroleum Products and Hazardous Substances Storage and Handling Act; and

(vii) Accessibility standards and specifications adopted pursuant to section 81-5,147.

(2) The State Fire Marshal may enter into contracts with private individuals or other agencies, boards, commissions, or governmental bodies for the purpose of carrying out his or her duties and responsibilities pursuant to the Arson Reporting Immunity Act, the Nebraska

Natural Gas Pipeline Safety Act of 1969, and sections 81-502 to 81-541.01, 81-5,132 to 81-5,146, and 81-5,151 to 81-5,157.

(3) The State Fire Marshal may delegate the authority set forth in this section to qualified local fire prevention personnel. The State Fire Marshal may overrule a decision, act, or policy of the local fire prevention personnel. When the State Fire Marshal overrules the local personnel, such local personnel may follow the appeals procedure established by sections 81-502.01 to 81-502.03. Such delegation of authority may be revoked by the State Fire Marshal for cause upon thirty days' notice after a hearing.

(4) The State Fire Marshal, first assistant fire marshal, and deputies shall have such other powers and perform such other duties as are set forth in sections 81-501.01 to 81-531 and 81-5,151 to 81-5,157 and as may be conferred and imposed by law.

(5) The rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section may conform generally to the standards recommended by the National Fire Protection Association, Pamphlet Number 101, known as the Life Safety Code, and associated pamphlets, but not when doing so would impose an unduly severe or costly burden without substantially contributing to the safety of persons or property. This section and the rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section shall apply to existing as well as new buildings, structures, and enclosures. Such rules and regulations shall also apply to sites or structures in public ownership listed on the National Register of Historic Places but without destroying the historic quality thereof.

(6) Plans for compliance with the rules and regulations adopted and promulgated pursuant to subdivision (1)(d) of this section shall be reviewed by the State Fire Marshal. Plans submitted after remodeling or construction has begun shall be accompanied by a penalty of fifty dollars in addition to the plan review fee set out in subdivision (4)(a) of section 81-505.01.

Source: Laws 1925, c. 183, § 2, p. 479; C.S.1929, § 81-5502; R.S.1943, § 81-502; Laws 1947, c. 313, § 1, p. 949; Laws 1967, c. 446, § 3, p. 1389; Laws 1969, c. 794, § 1, p. 3000; Laws 1972, LB 782, § 1; Laws 1973, LB 180, § 1; Laws 1976, LB 986, § 3; Laws 1981, LB 266, § 2; Laws 1982, LB 792, § 1; Laws 1983, LB 498, § 5; Laws 1984, LB 130, § 15; Laws 1985, LB 253, § 9; Laws 1986, LB 217, § 12; Laws 1987, LB 459, § 6; Laws 1989, LB 215, § 18; Laws 1993, LB 251, § 4; Laws 1993, LB 348, § 79; Laws 1993, LB 377, § 7; Laws 1995, LB 401, § 44; Laws 1996, LB 1044, § 837; Laws 1997, LB 307, § 215; Laws 1999, LB 594, § 70; Laws 2000, LB 819, § 153; Laws 2007, LB296, § 728.
Operative date July 1, 2007.

Cross Reference

Arson Reporting Immunity Act, see section 81-5,115.

Health Care Facility Licensure Act, see section 71-401.

Inspection of businesses credentialed under the Uniform Credentialing Act, see section 38-139.

Nebraska Natural Gas Pipeline Safety Act of 1969, see section 81-552.

Petroleum Products and Hazardous Substances Storage and Handling Act, see section 81-15,117.

Storage tank registration, see sections 81-1575 to 81-1577.01.

81-502.01 Nebraska Fire Safety Appeals Board; members; appointment; qualifications; term. For the purposes of assisting the State Fire Marshal in matters pertaining to the performance of his or her duties, there is hereby established the Nebraska Fire Safety Appeals Board. Such board shall consist of the following members: (1) A representative of the fire insurance industry with experience in fire prevention inspections,

(2) an architect licensed in this state, (3) a member of a board of education of a public school district, (4) a fire protection engineer, (5) a member of the inspection division of a paid fire department in this state, (6) an active member of a volunteer fire department in this state, (7) two representatives of the Department of Health and Human Services, and (8) a representative of the Nebraska Association of Hospitals and Health Systems. The members shall be appointed by the Governor and shall serve for a term of four years.

Source: Laws 1971, LB 570, § 1; Laws 1977, LB 485, § 1; Laws 1996, LB 1044, § 838; Laws 1997, LB 622, § 116; Laws 2007, LB296, § 729.
Operative date July 1, 2007.

81-523 State Fire Marshal; office; support and maintenance; tax on fire insurance companies; rate. (1) For the purpose of maintaining the office of the State Fire Marshal and such other fire prevention activities as the Governor may direct, every foreign and alien insurance company including nonresident attorneys for subscribers to reciprocal insurance exchanges shall, on or before March 1, pay a tax to the Director of Insurance of three-fourths of one percent of the gross direct writing premiums and assessments received by each of such companies during the preceding calendar year for fire insurance business done in this state.

(2) For the purpose set forth in subsection (1) of this section, every domestic insurance company including resident attorneys for subscribers to reciprocal insurance exchanges shall, on or before March 1, pay a tax to the Director of Insurance of three-eighths of one percent of the gross direct writing premiums and assessments received by each of such companies during the preceding calendar year for fire insurance business done in this state.

(3) The term fire insurance business, as used in subsections (1), (2), and (4) of this section, shall include, but not be limited to, premiums of policies on fire risks on automobiles, whether written under floater form or otherwise.

(4) Return premiums on fire insurance business, subject to the fire insurance tax, in accordance with subsections (1) and (2) of this section, may be deducted from the gross direct writing premiums for the purpose of the tax calculations provided for by subsections (1) and (2) of this section. In the case of mutual companies and assessment associations, the dividends paid or credited to policyholders or members in this state shall be construed to be return premiums.

(5) Any tax collected pursuant to subsections (1) and (2) of this section shall be remitted to the State Treasurer for credit to the General Fund.

Source: Laws 1925, c. 183, § 22, p. 488; C.S.1929, § 81-5522; Laws 1933, c. 82, § 1, p. 330; C.S.Supp.,1941, § 81-5522; R.S.1943, § 81-523; Laws 1949, c. 281, § 1, p. 977; Laws 1953, c. 332, § 1, p. 1091; Laws 1957, c. 376, § 1, p. 1316; Laws 1979, LB 212, § 1; Laws 2003, LB 408, § 4; Laws 2004, LB 1091, § 14; Laws 2007, LB322, § 24.
Operative date July 1, 2007.

(i) TRAINING DIVISION

81-5,153 Training Division Cash Fund; created; use; investment. The Training Division Cash Fund is created. Money collected pursuant to section 81-5,152 shall be remitted

to the State Treasurer for credit to the fund. The fund shall be used for the purpose of administering the training program established pursuant to sections 81-5,151 to 81-5,157. The fund shall be administered by the State Fire Marshal. 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 724, § 3; R.S.1943, (1987), § 79-1431; Laws 1993, LB 348, § 88; Laws 2004, LB 1091, § 17; Laws 2007, LB322, § 25.
Operative date July 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 6

HEALTH AND HUMAN SERVICES

(a) GENERAL POWERS

Section.

- 81-601. Department of Health and Human Services; powers.
- 81-602. Department of Health and Human Services; medical schools; inspection; examination of graduates.
- 81-604.01. Department of Health and Human Services; notified of facility not currently licensed; reports made; by whom; investigation.
- 81-604.02. Division of Public Health of Department of Health and Human Services; survey and certification agency for medicare program and federal clinical laboratory requirements.
- 81-604.03. Division of Public Health of Department of Health and Human Services; survey and certification agency for medicaid program; notice of violation; duties.

(h) RESEARCH GRANTS

- 81-637. Cancer and smoking disease research; terms, defined.
- 81-638. Cancer and smoking disease research; appropriation; distribution; contracts; requirements.
- 81-639. Cancer and smoking disease research; department; make grants and contracts; considerations.
- 81-640. Cancer and smoking disease research; department; adopt rules and regulations.

(i) CANCER REGISTRY

- 81-642. Cancer registry; legislative intent; information released.
- 81-647. Cancer registry; certain data; confidential; access for research.

(j) COMMUNITY AND HOME HEALTH SERVICES

- 81-651. Services authorized; powers.
- 81-652. Home health agency; funding authorized.

(k) BRAIN INJURY REGISTRY

- 81-654. Brain injury registry; terms, defined.
- 81-657. Brain injury registry; physician, psychologist, hospital, and rehabilitation center; report required; contents.

81-661. Brain injury registry; state agencies; duties.

(l) MEDICAL RECORDS AND HEALTH INFORMATION

81-663. Release of data; legislative findings.

81-664. Terms, defined.

81-671. Release of information to public health departments and agencies; requirements.

(m) HEALTH CARE DATA ANALYSIS

81-676. Health care data analysis section; established.

81-677. Health care data analysis section; duties.

81-678. Health care data analysis section; data and research initiatives; requirements.

81-679. Health care data analysis section; public-sector health care programs; requirements.

81-680. Department; contracts and grants; authorized; data collection requirements.

(n) PARKINSON'S DISEASE REGISTRY ACT

81-699. Terms, defined.

81-6,102. Diagnosis; report; contents.

81-6,110. Costs; how paid; termination of registry; when.

(o) OUTPATIENT SURGICAL PROCEDURES DATA ACT

81-6,113. Terms, defined.

(a) GENERAL POWERS

81-601 Department of Health and Human Services; powers. The Department of Health and Human Services shall have general supervision and control over matters relating to public health and sanitation and shall provide for examination as provided in section 81-602 and have supervision over all matters of quarantine and quarantine regulations.

Source: Laws 1919, c. 190, tit. VI, art. I, § 1, p. 750; C.S.1922, § 8159; C.S.1929, § 81-5601; Laws 1933, c. 149, § 5, p. 575; Laws 1941, c. 141, § 8, p. 560; C.S.Supp.,1941, § 81-927; C.S.Supp.,1941, § 81-5601; R.S.1943, § 81-601; Laws 1996, LB 1044, § 840; Laws 2007, LB296, § 730.
Operative date July 1, 2007.

81-602 Department of Health and Human Services; medical schools; inspection; examination of graduates. The Department of Health and Human Services shall have the right at all times to inspect the equipment and methods of teaching in all medical colleges and medical schools of the state and shall have the power to refuse examination to the graduates of any school which, on proper notice and hearing, shall be adjudged not a medical college or medical school in good standing as defined by the laws of this state.

Source: Laws 1919, c. 190, tit. VI, art. I, § 2, p. 750; C.S.1922, § 8160; C.S.1929, § 81-5602; R.S.1943, § 81-602; Laws 1996, LB 1044, § 842; Laws 2007, LB296, § 731.
Operative date July 1, 2007.

81-604.01 Department of Health and Human Services; notified of facility not currently licensed; reports made; by whom; investigation. Any local or state agency

or department, or any private facility involved in arranging or supervising placements for those persons requiring care or supervision, shall notify the Department of Health and Human Services when there is reason to believe that the total number of persons served in any institution, facility, place, or building exceeds three individuals and that such facility is not currently licensed by the Department of Health and Human Services. The department shall investigate or inspect such complaints pursuant to the Health Care Facility Licensure Act.

Source: Laws 1981, LB 487, § 4; Laws 1996, LB 1044, § 843; Laws 2000, LB 819, § 154; Laws 2007, LB296, § 732.
Operative date July 1, 2007.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

81-604.02 Division of Public Health of Department of Health and Human Services; survey and certification agency for medicare program and federal clinical laboratory requirements. For the purpose of assisting the citizens of the state in receiving benefits under the federal medicare law, the State of Nebraska authorizes the Division of Public Health of the Department of Health and Human Services to act as the survey and certification agency for the medicare program in Nebraska and to contract to perform such functions with the federal agency responsible for administration of the medicare program and to enter into such other agreements as may be necessary to implement federal requirements. The division may also contract with the federal agency to perform survey and certification functions in accordance with the federal Clinical Laboratory Improvement Amendments of 1988.

Source: Laws 1989, LB 344, § 14; Laws 1994, LB 1210, § 158; Laws 1996, LB 1044, § 844; Laws 2007, LB296, § 733.
Operative date July 1, 2007.

81-604.03 Division of Public Health of Department of Health and Human Services; survey and certification agency for medicaid program; notice of violation; duties. The Division of Public Health of the Department of Health and Human Services is hereby authorized to act as the survey and certification agency for the medicaid program and to enter into such agreements as may be necessary to carry out its duties. On and after July 1, 2007, the division shall notify the medicaid program of any violation by a nursing facility, as defined in section 71-2097, of federal regulations for participation in the medicaid program. Civil penalties will be determined pursuant to sections 71-2097 to 71-20,101.

Source: Laws 1989, LB 344, § 15; Laws 1996, LB 1044, § 845; Laws 1996, LB 1155, § 77; Laws 2007, LB296, § 734.
Operative date July 1, 2007.

(h) RESEARCH GRANTS

81-637 Cancer and smoking disease research; terms, defined. As used in sections 81-637 to 81-640, unless the context otherwise requires:

(1) Cancer means all malignant neoplasm regardless of the tissue of origin, including malignant lymphoma and leukemia;

(2) Department means the Department of Health and Human Services; and

(3) Smoking disease means diseases whose causes are linked to smoking including, but not limited to, cardiovascular, pulmonary, and gastrointestinal diseases.

Source: Laws 1981, LB 506, § 1; Laws 1996, LB 1044, § 846; Laws 2007, LB296, § 735.
Operative date July 1, 2007.

81-638 Cancer and smoking disease research; appropriation; distribution; contracts; requirements. (1) The Legislature shall appropriate for each year from the Health and Human Services Cash Fund to the department an amount derived from one cent of the cigarette tax imposed by section 77-2602, less any amount appropriated from the fund specifically to the University of Nebraska Eppley Institute for Research in Cancer and Allied Diseases. The department shall, after deducting expenses incurred in the administration of such funds, distribute such funds exclusively for grants and contracts for research of cancer and smoking diseases, for funding the cancer registry prescribed in sections 81-642 to 81-650, and for associated expenses due to the establishment and maintenance of such cancer registry. Not more than two hundred thousand dollars shall be appropriated for funding the cancer registry and associated expenses. The University of Nebraska may receive such grants and contracts, and other postsecondary institutions having colleges of medicine located in the State of Nebraska may receive such contracts.

(2) The Legislature shall appropriate for each year from the Health and Human Services Cash Fund to the department for cancer research an amount derived from two cents of the cigarette tax imposed by section 77-2602 to be used exclusively for grants and contracts for research on cancer and smoking diseases. No amount shall be appropriated or used pursuant to this subsection for the operation and associated expenses of the cancer registry. Not more than one-half of the funds appropriated pursuant to this subsection shall be distributed to the University of Nebraska Medical Center for research in cancer and allied diseases and the University of Nebraska Eppley Institute for Research in Cancer and Allied Diseases. The remaining funds available pursuant to this subsection shall be distributed for contracts with other postsecondary educational institutions having colleges of medicine located in Nebraska which have cancer research programs for the purpose of conducting research in cancer and allied diseases.

(3) Any contract between the department and another postsecondary educational institution for cancer research under subsection (2) of this section shall provide that:

(a) Any money appropriated for such contract shall only be used for cancer research and shall not be used to support any other program in the institution;

(b) Full and detailed reporting of the expenditure of all funds under the contract is required. The report shall include, but not be limited to, separate accounting for personal services, equipment purchases or leases, and supplies. Such reports shall be made available to the Legislature; and

(c) No money appropriated for such contract shall be spent for travel, building construction, or any other purpose not directly related to the research that is the subject of the contract.

Source: Laws 1981, LB 506, § 2; Laws 1983, LB 192, § 2; Laws 1986, LB 258, § 33; Laws 1986, LB 925, § 1; Laws 1991, LB 703, § 67; Laws 1993, LB 595, § 3; Laws 1996, LB 1044, § 847; Laws 2007, LB296, § 736.
Operative date July 1, 2007.

81-639 Cancer and smoking disease research; department; make grants and contracts; considerations. The department when making grants and contracts pursuant to sections 81-637 to 81-640 shall consider:

(1) The relevancy of the applicant's proposal to the furthering of research of cancer and smoking diseases;

(2) The feasibility of the applicant's proposal;

(3) The availability of other sources of funding for the applicant's proposal;

(4) The facilities, personnel, and expertise available to the applicant for use in the proposal; and

(5) Evidence of the quality of the applicant's prior or existing programs for research of cancer and smoking diseases or the applicant's potential for developing new programs for such research.

Source: Laws 1981, LB 506, § 3; Laws 2007, LB296, § 737.
Operative date July 1, 2007.

81-640 Cancer and smoking disease research; department; adopt rules and regulations. The department shall adopt and promulgate rules and regulations pursuant to the Administrative Procedure Act to:

(1) Establish an application process for grants and contracts;

(2) Establish criteria for programs in order to receive funding;

(3) Establish criteria as to the rates and amount of funding; and

(4) Establish other procedures as necessary for the proper administration of sections 81-637 to 81-640.

Source: Laws 1981, LB 506, § 4; Laws 2007, LB296, § 738.
Operative date July 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

(i) CANCER REGISTRY

81-642 Cancer registry; legislative intent; information released. It is the intent of the Legislature to require the establishment and maintenance of a cancer registry for the State of Nebraska. This responsibility is delegated to the Department of Health and Human Services along with the authority to exercise the necessary powers to implement sections 81-642 to 81-650. To insure an accurate and continuing source of data concerning cancer, all hospitals within the state shall make available to the department upon its request, at least once

a year, information contained in the medical records of patients who have cancer within such time following its diagnosis as the department shall require. Any medical doctor, osteopathic physician, or dentist within the state shall make such information available to the department upon request by the department. This cancer registry should provide a central data bank of accurate, precise, and current information which medical authorities state will assist in the research for the prevention, cure, and control of cancer. The information contained in the cancer registry may be used as a source of data for scientific and medical research. Any information released from the cancer registry shall be disclosed as Class I, Class II, Class III, or Class IV data as provided in sections 81-663 to 81-675.

Source: Laws 1982, LB 212, § 1; Laws 1989, LB 342, § 38; Laws 1991, LB 703, § 68; Laws 1993, LB 536, § 113; Laws 1995, LB 406, § 87; Laws 1996, LB 1044, § 848; Laws 2007, LB296, § 739.
Operative date July 1, 2007.

81-647 Cancer registry; certain data; confidential; access for research. (1) All data obtained from medical records of individual patients is for the confidential use of the department and the private or public persons or entities that the department determines may view such records as provided in sections 81-663 to 81-675.

(2) The department may approve individuals or entities to obtain access to case-specific data or case-specific and patient-identifying data to assist in their research for prevention, cure, or control of cancer. Any information released from the cancer registry shall be disclosed as provided in sections 81-663 to 81-675.

(3) For purposes of protecting the public health, local health departments in Nebraska, health departments or cancer registries located outside Nebraska, and the Centers for Disease Control and Prevention and the National Cancer Institute of the United States Department of Health and Human Services or their successors may have access to the data contained in the cancer registry upon the department's approval based on the entity's written application.

Source: Laws 1982, LB 212, § 6; Laws 1986, LB 925, § 4; Laws 1991, LB 703, § 72; Laws 1992, LB 1019, § 123; Laws 1993, LB 536, § 117; Laws 2006, LB 994, § 111; Laws 2007, LB185, § 48.
Operative date September 1, 2007.

(j) COMMUNITY AND HOME HEALTH SERVICES

81-651 Services authorized; powers. (1) The Department of Health and Human Services may provide visiting community nursing services or home health services to persons living in the state and may charge fees for such services. The department shall not be exempt from licensure as a home health agency under the Health Care Facility Licensure Act.

(2) The department may organize, license, and operate home health agencies to assist in providing services under subsection (1) of this section.

(3) The department (a) may employ necessary personnel, including, but not limited to, licensed nurses, physical therapists, physical therapy assistants, audiologists, speech-language pathologists, audiology or speech-language pathology assistants, occupational therapists, occupational therapy assistants, home health aides, homemakers,

respiratory care practitioners, nutritionists, social workers, and supervisory personnel, and may purchase equipment and materials necessary to maintain an effective program or (b) may contract with individuals or licensed agencies to obtain such services or to assist in providing services under subsection (1) of this section.

(4) The department may contract with any public, private, for-profit, or nonprofit agency or individual to provide home health services through any licensed home health agency created under subsection (2) of this section.

Source: Laws 1987, LB 389, § 2; Laws 1988, LB 1100, § 179; Laws 1989, LB 429, § 41; Laws 1996, LB 1044, § 849; Laws 1996, LB 1155, § 78; Laws 1997, LB 608, § 25; Laws 2000, LB 819, § 155; Laws 2007, LB247, § 57.
Operative date June 1, 2007.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

81-652 Home health agency; funding authorized. The Department of Health and Human Services may (1) charge and receive fees, (2) accept third-party reimbursements or matching funds from any federal governmental agency, private corporation, or other public or private organization or entity, and (3) accept grants or donations from any public or private agency, organization, or entity for services provided by any home health agency operated by the department. Such funds shall be paid to the state treasury and credited to the Health and Human Services Cash Fund.

Source: Laws 1987, LB 389, § 3; Laws 1996, LB 1044, § 850; Laws 2007, LB296, § 740.
Operative date July 1, 2007.

(k) BRAIN INJURY REGISTRY

81-654 Brain injury registry; terms, defined. For purposes of sections 81-653 to 81-661:

(1) Brain injury registry shall mean the system of reporting established by sections 81-653 to 81-661 in which cases of brain or head injury in this state are reported and recorded in order to achieve the goals of statistical identification and planning for treatment and rehabilitation of persons with brain or head injury and prevention of such injury;

(2) Brain or head injury shall mean clinically evident neurotrauma resulting directly or indirectly from closed or penetrating brain or head trauma, infection, febrile condition, anoxia, vascular lesions, toxin, or spinal cord injury, not primarily related to congenital or degenerative conditions, chemical dependency, or aging processes, which impairs mental, cognitive, behavioral, or physical functioning; and

(3) Department shall mean the Department of Health and Human Services.

Source: Laws 1992, LB 308, § 2; Laws 1996, LB 1044, § 851; Laws 2007, LB296, § 741.
Operative date July 1, 2007.

81-657 Brain injury registry; physician, psychologist, hospital, and rehabilitation center; report required; contents. (1) If a person with brain or head injury is not

admitted to a hospital within the state but is treated in this state in the office of a physician or psychologist licensed under the Uniform Credentialing Act, the treating physician or psychologist shall report the brain or head injury to the department within thirty days after identification of the person sustaining such injury. Each treating physician or psychologist shall be required to report each brain or head injury only one time.

(2) Each hospital and each rehabilitation center located within a hospital in the State of Nebraska shall annually report to the department a brain or head injury which results in admission or treatment.

(3) The report shall contain the following information about the person sustaining the injury:

(a) Name;

(b) Social security number;

(c) Date of birth;

(d) Gender;

(e) Residence;

(f) Date of the injury;

(g) Final diagnosis or classification of the injury according to the International Classification of Disease, Clinical Modification Coding System, as adopted by the department;

(h) Cause of the injury and, if practicable, whether the injury resulted from an accident involving the use of alcohol;

(i) Place or site of occurrence of the injury;

(j) Identification of the reporting source;

(k) Dispensation upon discharge;

(l) Payor source; and

(m) Any additional information the department can demonstrate is reasonable in order to implement the purposes stated in section 81-653.

Source: Laws 1992, LB 308, § 5; Laws 1998, LB 1073, § 163; Laws 2001, LB 152, § 1; Laws 2006, LB 1178, § 1; Laws 2007, LB463, § 1312.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

81-661 Brain injury registry; state agencies; duties. The Department of Correctional Services, the Department of Health and Human Services, the State Department of Education and its divisions of special education and vocational rehabilitation, and all other state agencies which serve persons with brain or head injury shall recognize brain or head injury as a distinct disability and shall identify those persons with brain or head injury among the persons served by the agency. Such agencies shall utilize the brain injury registry for improvement of state services for persons with brain or head injury.

Source: Laws 1992, LB 308, § 9; Laws 1996, LB 1044, § 852; Laws 2007, LB296, § 742.
Operative date July 1, 2007.

(I) MEDICAL RECORDS AND HEALTH INFORMATION

81-663 Release of data; legislative findings. The Legislature finds that there is a need to establish a framework for consistent release of medical record and health information from the many registries and data bases the department maintains for the State of Nebraska. The purpose of the release of data is to encourage research which will protect the health and safety of the citizens of Nebraska by assisting in the prevention, cure, and control of specific diseases or injuries.

Source: Laws 1993, LB 536, § 1; Laws 1996, LB 1044, § 853; Laws 2007, LB296, § 743.
Operative date July 1, 2007.

81-664 Terms, defined. For purposes of sections 81-663 to 81-675:

(1) Aggregate data means data contained in the medical record and health information registries maintained by the department which is compiled in a statistical format and which does not include patient-identifying data;

(2) Approved researcher means an individual or entity which is approved by the department pursuant to section 81-666 to obtain access to data contained in the medical record and health information registries maintained by the department to assist in the scientific or medical research for the prevention, cure, or control of a disease or injury process;

(3) Case-specific data means data contained in the medical record and health information registries concerning a specific individual other than patient-identifying data;

(4) Department means the Department of Health and Human Services;

(5) Medical record and health information registry means the system of reporting certain medical conditions occurring in this state, as prescribed by law, which are reported and recorded in order to achieve the goals of prevention, cure, and control through research and education, and includes the birth defects registry established in section 71-646, the cancer registry established in sections 81-642 to 81-650, the brain injury registry established in sections 81-653 to 81-661, and the Parkinson's Disease Registry established in the Parkinson's Disease Registry Act;

(6) Patient-identifying data means the patient's name, address, record number, symbol, or other identifying particular assigned to or related to an individual patient; and

(7) Research means study specific to the diseases or injuries for which access to data is requested and which is dedicated to the prevention, cure, or control of the diseases or injuries.

Source: Laws 1993, LB 536, § 2; Laws 1996, LB 496, § 17; Laws 1996, LB 1044, § 854; Laws 2001, LB 152, § 3; Laws 2001, LB 209, § 34; Laws 2007, LB296, § 744.
Operative date July 1, 2007.

Cross Reference

Parkinson's Disease Registry Act, see section 81-697.

81-671 Release of information to public health departments and agencies; requirements. (1) Except as otherwise provided by the law governing a specific medical record and health information registry, the department may release information contained in a registry to official public health departments and agencies as follows:

(a) Upon request by an official local health department within the State of Nebraska, the department may release such data to the requesting local health department. The official local health department shall not contact patients using data received under sections 81-663 to 81-675 without approval by the department of an application made pursuant to section 81-666; and

(b) Upon approval of an application by federal, state, or local official public health agencies made pursuant to section 81-666, the department may release such data.

(2) The receiving agency shall not further disclose such data to any third party but may publish aggregate statistical reports, except that no patient-identifying data shall be divulged, made public, or released to any public or private person or entity. The receiving agency shall comply with the patient contact provisions of sections 81-663 to 81-675. The receiving agency shall acknowledge the department and its medical record and health information registries in any publication in which information obtained from the medical record and health information registries is used.

(3) The release and acknowledgment provisions of this section do not apply to cancer registries located outside Nebraska which receive data through approved data exchange agreements.

Source: Laws 1993, LB 536, § 9; Laws 2006, LB 994, § 113; Laws 2007, LB185, § 49.
Operative date September 1, 2007.

(m) HEALTH CARE DATA ANALYSIS

81-676 Health care data analysis section; established. The Department of Health and Human Services shall establish a health care data analysis section to conduct data and research initiatives in order to improve the efficiency and effectiveness of health care in Nebraska.

Source: Laws 1994, LB 1223, § 122; Laws 1996, LB 1044, § 855; Laws 2007, LB296, § 745.
Operative date July 1, 2007.

81-677 Health care data analysis section; duties. The Department of Health and Human Services, through the health care data analysis section, shall:

(1) Conduct research using existing health care data bases and promote applications based on existing research;

(2) Work closely with health plans and health care providers to promote improvements in health care efficiency and effectiveness;

(3) Participate as a partner or sponsor of private-sector initiatives that promote applied research on health care delivery, outcomes, costs, quality, and management; and

(4) Provide technical assistance as needed.

Source: Laws 1994, LB 1223, § 123; Laws 1996, LB 1044, § 856; Laws 2007, LB296, § 746.
Operative date July 1, 2007.

81-678 Health care data analysis section; data and research initiatives; requirements. Data and research initiatives by the health care data analysis section of the Department of Health and Human Services shall:

- (1) Promote applied research on health care delivery, outcomes, costs, quality, and management;
- (2) Conduct research and promote health care applications based on scientifically sound and statistically valid methods;
- (3) Emphasize data that is useful and relevant and is not redundant of existing data;
- (4) Be structured to minimize the administrative burden on health plans, health care providers, and the health care delivery system; and
- (5) Promote continuous improvement in the efficiency and effectiveness of health care delivery.

Source: Laws 1994, LB 1223, § 124; Laws 1996, LB 1044, § 857; Laws 2007, LB296, § 747.
Operative date July 1, 2007.

81-679 Health care data analysis section; public-sector health care programs; requirements. Data and research initiatives by the health care data analysis section of the Department of Health and Human Services related to public-sector health care programs shall:

- (1) Assist the state's current health care financing and delivery programs to deliver and purchase health care in a manner that promotes improvements in health care efficiency and effectiveness;
- (2) Assist the state in its public health activities, including the analysis of disease prevalence and trends and the development of public health responses;
- (3) Assist the state in developing and refining its overall health policy, including policy related to health care costs, quality, and access; and
- (4) Provide health care information that allows the evaluation of state health care financing and delivery programs.

Source: Laws 1994, LB 1223, § 125; Laws 1996, LB 1044, § 858; Laws 2007, LB296, § 748.
Operative date July 1, 2007.

81-680 Department; contracts and grants; authorized; data collection requirements. (1) To carry out the duties assigned under sections 81-677 to 81-679, the Department of Health and Human Services may contract with or provide grants to private-sector entities.

(2) The health care data analysis section of the department shall negotiate with private-sector organizations currently collecting data on specific health conditions of interest to the section in order to obtain required data in a cost-effective manner and minimize administrative costs. The section shall support linkages between existing private-sector data

bases and shall consider and implement methods to streamline data collection in order to reduce public-sector and private-sector administrative costs.

(3) The health care data analysis section shall use existing public-sector data bases, such as those existing for the medical assistance program and medicare, to the greatest extent possible. The section shall support linkages between existing public-sector data bases and consider and implement methods to streamline public-sector data collection in order to reduce public-sector and private-sector administrative costs.

Source: Laws 1994, LB 1223, § 126; Laws 1996, LB 1044, § 859; Laws 2007, LB296, § 749.
Operative date July 1, 2007.

(n) PARKINSON'S DISEASE REGISTRY ACT

81-699 Terms, defined. For purposes of the Parkinson's Disease Registry Act:

(1) Approved researcher means an individual or entity who is approved by the department in accordance with section 81-666 to obtain access to data contained in the Parkinson's Disease Registry to assist in scientific or medical research for the prevention, cure, or control of Parkinson's disease;

(2) Department means the Department of Health and Human Services;

(3) Parkinson's disease means a chronic, progressive disorder in which there is a lack of the chemical dopamine in the brain as a direct result of the destruction of the dopamine-producing cells in the portion of the brain called the substantia nigra. Clinical features of the disease include tremor at rest, slow movements, rigidity, and unsteady or shuffling gait and may be indicated by improvement after using medications used for Parkinson's disease; and

(4) Related movement disorder means a disorder that resembles Parkinson's disease in some way, such as another kind of tremor.

Source: Laws 2001, LB 152, § 7; Laws 2007, LB296, § 750.
Operative date July 1, 2007.

81-6,102 Diagnosis; report; contents. (1) If a resident of this state is diagnosed with Parkinson's disease or a related movement disorder within this state in the office of a physician licensed under the Uniform Credentialing Act, the physician shall file a report of the diagnosis and pertinent information with the department within sixty days after the diagnosis.

(2) An individual resident of this state who has been diagnosed with Parkinson's disease or a related movement disorder by a licensed physician may file a report with the department providing relevant information. The department shall provide for validation of individual reports.

(3) A report filed under this section shall contain the following information about the person diagnosed with Parkinson's disease or a related movement disorder:

(a) Name;

(b) Social security number;

(c) Date of birth;

- (d) Gender;
- (e) Address at time of diagnosis;
- (f) Current address;
- (g) Date of diagnosis;
- (h) Physician;
- (i) Identification of reporting source; and
- (j) Any additional information the department demonstrates is reasonable to implement the Parkinson's Disease Registry Act.

Source: Laws 2001, LB 152, § 10; Laws 2007, LB463, § 1313.
Operative date December 1, 2008.

Cross Reference

Uniform Credentialing Act, see section 38-101.

81-6,110 Costs; how paid; termination of registry; when. Costs associated with administration of the Parkinson's Disease Registry Act shall be paid from cash funds, contract receipts, gifts, and grants. No general funds shall be used to pay such costs. Funds received by the department for the payment of such costs shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Notwithstanding any other provision of the act, the Parkinson's Disease Registry and all duties related to the administration of such registry and such act shall cease as of June 30 of any year in which the department has insufficient funds on hand to perform its duties under the act for the next fiscal year, after providing thirty days' written notice to each approved researcher who has contracted with the department under section 81-6,101 in the current biennium.

Source: Laws 2001, LB 152, § 18; Laws 2003, LB 667, § 24; Laws 2007, LB296, § 751.
Operative date July 1, 2007.

(o) OUTPATIENT SURGICAL PROCEDURES DATA ACT

81-6,113 Terms, defined. For purposes of the Outpatient Surgical Procedures Data Act:

- (1) Department means the Department of Health and Human Services;
- (2) Medicaid means the medical assistance program established pursuant to the Medical Assistance Act;
- (3) Medicare means Title XVIII of the federal Social Security Act, as such title existed on January 1, 2003;
- (4) Outpatient surgical procedure means a surgical procedure provided to patients who do not require inpatient hospitalization;
- (5) Primary payor means the public payor or private payor which is expected to be responsible for the largest percentage of the patient's current bill;
- (6) Private payor means any nongovernmental source of funding; and
- (7) Public payor means medicaid, medicare, and any other governmental source of funding.

Source: Laws 2003, LB 73, § 3; Laws 2006, LB 1248, § 88; Laws 2007, LB296, § 752.
Operative date July 1, 2007.

Cross Reference

Medical Assistance Act, see section 68-901.

ARTICLE 8

INDEPENDENT BOARDS AND COMMISSIONS

(g) REAL ESTATE COMMISSION

Section.

81-885.01. Terms, defined.

(i) LAND SURVEYING

81-8,118. Land surveying; application and registration fees; examination fee; failure to pay fees, effect.

(j) STATE ATHLETIC COMMISSIONER

81-8,129. State Athletic Commissioner; jurisdiction; activities covered.

81-8,130.01. Professional matches; promoters; licenses and permits; fee.

81-8,131. Mixed martial arts, defined.

81-8,132. Licensee; bond; conditions.

81-8,133. Referees; license; duties; fee.

81-8,133.01. Other officials and contestants; license required; fees; revocation of license.

81-8,134. Boxing, mixed martial arts, or sparring matches; rules governing.

81-8,135. Licensee; reports; contents; gross receipts tax; amounts.

81-8,138. Contestants; compensation; when payable; fake contests.

81-8,139. State Athletic Commissioner; rules and regulations; prescribe; powers.

81-8,139.01. Athletic Advisory Committee; created; members; qualifications; expenses; duties; appeal.

(o) PROFESSIONAL LANDSCAPE ARCHITECTS

81-8,194. Board; fees; disposition; State Board of Landscape Architects Cash Fund; created.

(p) TORT CLAIMS, STATE CLAIMS BOARD,
AND RISK MANAGEMENT PROGRAM

81-8,219. State Tort Claims Act; claims exempt.

81-8,234. Skatepark and bicycle motocross park; sign required; warning notice.

81-8,235. Act, how cited.

81-8,239.01. Risk Management Program; risk management and state claims division of the Department of Administrative Services; established; Risk Manager; powers and duties.

81-8,239.02. State Insurance Fund; State Self-Insured Property Fund; State Self-Insured Indemnification Fund; State Self-Insured Liability Fund; created; purposes.

81-8,239.03. Risk Manager; present budget request; contents; deficiency appropriation; procedure; investment.

- 81-8,239.04. Money or property recovered by state; disposition.
- 81-8,239.05. Indemnification of state officials and employees; when; Attorney General; duties; report.
- 81-8,239.07. Risk Manager; self-insure; risk management services; procure insurance; amount of protection; premium; payments.
- 81-8,239.11. Settlements and judgments; state agency; Attorney General; filing required; insufficient funds; Risk Manager; duties.

(v) STATE MISCELLANEOUS CLAIMS ACT

- 81-8,294. Act, how cited.
- 81-8,300.01. Statute of limitation.

(g) REAL ESTATE COMMISSION

81-885.01 Terms, defined. For purposes of the Nebraska Real Estate License Act, unless the context otherwise requires:

(1) Real estate means and includes condominiums and leaseholds, as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold, and whether the real estate is situated in this state or elsewhere;

(2) Broker means any person who, for any form of compensation or consideration or with the intent or expectation of receiving the same from another, negotiates or attempts to negotiate the listing, sale, purchase, exchange, rent, lease, or option for any real estate or improvements thereon, or assists in procuring prospects or holds himself or herself out as a referral agent for the purpose of securing prospects for the listing, sale, purchase, exchange, renting, leasing, or optioning of any real estate or collects rents or attempts to collect rents, gives a broker's price opinion or comparative market analysis, or holds himself or herself out as engaged in any of the foregoing. Broker also includes any person: (a) Employed, by or on behalf of the owner or owners of lots or other parcels of real estate, for any form of compensation or consideration to sell such real estate or any part thereof in lots or parcels or make other disposition thereof; (b) who auctions, offers, attempts, or agrees to auction real estate; or (c) who buys or offers to buy or sell or otherwise deals in options to buy real estate;

(3) Associate broker means a person who has a broker's license and who is employed by another broker to participate in any activity described in subdivision (2) of this section;

(4) Designated broker means an individual holding a broker's license who has full authority to conduct the real estate activities of a real estate business. In a sole proprietorship, the owner, or broker identified by the owner, shall be the designated broker. In the event the owner identifies the designated broker, the owner shall file a statement with the commission subordinating to the designated broker full authority to conduct the real estate activities of the sole proprietorship. In a partnership, limited liability company, or corporation, the partners, limited liability company members, or board of directors shall identify the designated broker for its real estate business by filing a statement with the commission subordinating to the designated broker full authority to conduct the real estate activities of the partnership, limited liability company, or corporation. The designated broker shall also be responsible for supervising the real estate activities of any associate brokers or salespersons;

(5) Inactive broker means an associate broker whose license has been returned to the commission by the licensee's broker, a broker who has requested the commission to place the license on inactive status, a new licensee who has failed to designate an employing broker or have the license issued as an individual broker, or a broker whose license has been placed on inactive status under statute, rule, or regulation;

(6) Salesperson means any person, other than an associate broker, who is employed by a broker to participate in any activity described in subdivision (2) of this section;

(7) Inactive salesperson means a salesperson whose license has been returned to the commission by the licensee's broker, a salesperson who has requested the commission to place the license on inactive status, a new licensee who has failed to designate an employing broker, or a salesperson whose license has been placed on inactive status under statute, rule, or regulation;

(8) Person means and includes individuals, corporations, partnerships, and limited liability companies, except that when referring to a person licensed under the act, it means an individual;

(9) Subdivision or subdivided land means any real estate offered for sale and which has been registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590 and following, 15 U.S.C. 1701 and following, as such act existed on January 1, 1973, or real estate located out of this state which is divided or proposed to be divided into twenty-five or more lots, parcels, or units;

(10) Subdivider means any person who causes land to be subdivided into a subdivision for himself, herself, or others or who undertakes to develop a subdivision but does not include a public agency or officer authorized by law to create subdivisions;

(11) Purchaser means a person who acquires or attempts to acquire or succeeds to an interest in land;

(12) Commission means the State Real Estate Commission;

(13) Broker's price opinion means an analysis, opinion, or conclusion prepared by a person licensed under the Nebraska Real Estate License Act in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property for the purpose of listing, purchase, or sale;

(14) Comparative market analysis means an analysis, opinion, or conclusion prepared by a person licensed under the act in the ordinary course of his or her business relating to the price of specified interests in or aspects of identified real estate or identified real property by comparison to other real property currently or recently in the marketplace for the purpose of listing, purchase, or sale;

(15) Distance education means courses in which instruction does not take place in a traditional classroom setting, but rather through other media by which instructor and student are separated by distance and sometimes by time; and

(16) Regulatory jurisdiction means a state, district, or territory of the United States, a province of Canada or a foreign country, or a political subdivision of a foreign country, which has implemented and administers laws regulating the activities of a broker.

Source: Laws 1973, LB 68, § 1; Laws 1979, LB 68, § 1; Laws 1983, LB 182, § 1; Laws 1990, LB 350, § 1; Laws 1991, LB 118, § 2; Laws 1993, LB 121, § 529; Laws 1999, LB 618, § 6; Laws 2002, LB 863, § 10; Laws 2007, LB26, § 1.
Effective date September 1, 2007.

(i) LAND SURVEYING

81-8,118 Land surveying; application and registration fees; examination fee; failure to pay fees, effect. To pay the expense of the operation and enforcement of sections 81-8,108 to 81-8,127, the examining board shall establish application and registration fees. Total application and registration fees shall not exceed two hundred dollars and shall be in addition to the examination fee which shall be set to recover the costs of the examination and its administration. The board may direct applicants to pay the examination fee directly to a third party who has contracted to administer the examination. At the time the application for registration is submitted the board shall collect from the applicant a nonrefundable application fee. If the applicant successfully qualifies by examination, he or she shall be registered until April 1 of the immediately following odd-numbered year upon payment of a registration fee as set forth in the rules or regulations. After the issuance of a certificate of registration, a biennial fee of not less than five nor more than one hundred fifty dollars, as the examining board shall direct, shall be due and payable on or before January 1 of each odd-numbered year. Failure to remit biennial fees when due shall automatically cancel the registration effective the immediately following April 1, but otherwise the registration shall remain in full force and effect continuously from the date of issuance, unless suspended or revoked by the examining board for just cause. A registration which has been canceled for failure to pay the biennial fee when due may be reinstated within one year, but the biennial fee shall be increased ten percent for each month or fraction of a month that payment is delayed. Nothing in this section shall prevent the examining board from suspending or revoking any registration for just cause.

Source: Laws 1957, c. 383, § 11, p. 1335; Laws 1971, LB 442, § 22; Laws 1985, LB 564, § 1; Laws 1986, LB 621, § 1; Laws 1994, LB 874, § 16; Laws 2007, LB252, § 1.
Effective date September 1, 2007.

(j) STATE ATHLETIC COMMISSIONER

81-8,129 State Athletic Commissioner; jurisdiction; activities covered. The State Athletic Commissioner shall have sole direction, management, control, and jurisdiction over all professional mixed martial arts, wrestling, and boxing, amateur mixed martial arts, boxing, and sparring matches, and exhibitions to be held within the state, except such as are conducted by universities, colleges, high schools, the military, and recognized amateur associations for contestants under sixteen years of age. No professional boxers, mixed martial arts contestants, or wrestlers, or amateur boxers or mixed martial arts contestants who have attained the age of sixteen, shall participate in a match or exhibition for a prize or purse, or at which an admission

fee is charged, either directly or indirectly, in the form of dues or otherwise, in this state except by a club, association, organization, or person licensed by the commissioner, as provided in section 81-8,130, and in pursuance of a license granted by the commissioner for such match or exhibition.

Source: Laws 1957, c. 382, § 2, p. 1327; Laws 1980, LB 849, § 2; Laws 2007, LB471, § 1.
Effective date May 17, 2007.

81-8,130.01 Professional matches; promoters; licenses and permits; fee. Licenses and permits may be issued to professional mixed martial arts, boxing, or wrestling promoters, whether persons, clubs, or associations, for the sole purpose of conducting professional matches under such rules and regulations as the State Athletic Commissioner shall adopt. Each application for such license shall be accompanied by a fee set by the commissioner in rule and regulation. Such fee shall be not less than one hundred dollars and not more than three hundred dollars. If the promoter is an individual, the application shall include his or her social security number.

Source: Laws 1980, LB 849, § 17; Laws 1997, LB 752, § 222; Laws 2002, LB 482, § 2; Laws 2007, LB471, § 2.
Effective date May 17, 2007.

81-8,131 Mixed martial arts, defined. For purposes of sections 81-8,128 to 81-8,142.01, mixed martial arts, commonly referred to as MMA, means an unarmed combat sport in which two competitors seek to achieve dominance over each other by utilizing a combination of permitted martial arts techniques from disciplines of martial arts, including, but not limited to, grappling, kicking, and striking. Martial arts means any one of the disciplines set forth in rules and regulations adopted and promulgated by the State Athletic Commissioner.

Source: Laws 2007, LB471, § 11.
Effective date May 17, 2007.

81-8,132 Licensee; bond; conditions. No license shall be granted unless the licensee has executed a bond in the sum of not less than one thousand dollars in the case of amateur mixed martial arts or boxing, nor less than five thousand dollars in the case of professional wrestling, mixed martial arts, or boxing. The license shall be approved by the State Athletic Commissioner, conditioned on the faithful compliance by the licensee with the provisions of sections 81-8,129 to 81-8,142.01, the rules and regulations of the commissioner, and such other laws of the state as may be applicable to anything done by the licensee in pursuance of the license.

Source: Laws 1957, c. 382, § 5, p. 1328; Laws 1980, LB 849, § 5; Laws 2007, LB471, § 3.
Effective date May 17, 2007.

81-8,133 Referees; license; duties; fee. The State Athletic Commissioner is authorized to grant licenses to competent referees, upon an application and the payment of a

fee set by the commissioner in rule and regulation. Such fee shall be not less than ten dollars and not more than forty dollars per annum. The commissioner may revoke any license so granted for such cause as may be deemed sufficient. At every wrestling, boxing, mixed martial arts, or sparring match or exhibition there shall be in attendance a duly licensed referee, who shall direct and control the match. The referee shall stop the match whenever he or she deems it advisable, (1) because of the physical condition of the contestants or one of them, (2) when one of the contestants is clearly outclassed by his or her opponent, or (3) for any other sufficient reason. The referee shall, at the termination of every wrestling, boxing, mixed martial arts, or sparring match or exhibition, indicate a winner. The fees of the referee and other licensed officials may be fixed by the commissioner and shall be paid by the licensed organization.

Source: Laws 1957, c. 382, § 6, p. 1328; Laws 1980, LB 849, § 6; Laws 2002, LB 482, § 3; Laws 2007, LB471, § 4.
Effective date May 17, 2007.

81-8,133.01 Other officials and contestants; license required; fees; revocation of license. The State Athletic Commissioner may grant licenses to qualified physicians, managers, matchmakers, and professional mixed martial arts, wrestling, boxing, or sparring match or exhibition judges upon an application and payment of an annual fee set by the commissioner in rule and regulation. Such fee for matchmakers shall be not less than ten dollars and not more than one hundred dollars. Such fee for physicians, managers, and professional mixed martial arts, wrestling, boxing, or sparring match or exhibition judges shall be not less than ten dollars and not more than twenty dollars. The commissioner may also grant licenses to qualified timekeepers, contestants, and seconds upon an application and payment of an annual fee set by the commissioner in rule and regulation. Such fee shall be not less than ten dollars and not more than twenty dollars. The application shall include the applicant's social security number. No person shall serve as physician, manager, matchmaker, or judge at any professional mixed martial arts, wrestling, boxing, or sparring match or exhibition who is not licensed as such. No person shall serve as timekeeper or contestant at any professional wrestling, mixed martial arts, or boxing match who is not licensed as such. The commissioner shall have summary authority to stop any match at which any person is serving in violation of the provisions of this section. Any license granted under the provisions of this section may be revoked for cause.

Source: Laws 1963, c. 501, § 1, p. 1604; Laws 1980, LB 849, § 7; Laws 1984, LB 980, § 1; Laws 1997, LB 752, § 223; Laws 2002, LB 482, § 4; Laws 2007, LB471, § 5.
Effective date May 17, 2007.

81-8,134 Boxing, mixed martial arts, or sparring matches; rules governing. (1) Any boxing match or mixed martial arts match conducted in this state which is labeled or promoted as a championship boxing match or a championship mixed martial arts match shall have regional or national significance and the approval of a nationally recognized professional boxing or mixed martial arts association.

(2) Professional boxing or sparring matches or exhibitions shall not exceed ten rounds in length, except in a championship match, which shall not exceed fifteen rounds. No round

shall be longer than three minutes. At least one minute shall intervene between rounds. The contestants shall wear during the contest gloves weighing at least eight ounces each.

(3) Professional mixed martial arts matches or exhibitions shall not exceed three rounds in length, except in a championship match, which shall not exceed five rounds in length. No round shall be longer than five minutes. At least one minute shall intervene between rounds.

(4) No boxing contestant or mixed martial arts contestant shall be allowed to participate or take part in any contest in this state unless a duly licensed physician shall certify in writing that such contestant has taken a physical examination the day of the contest and is physically fit to engage in the proposed contest.

Source: Laws 1957, c. 382, § 7, p. 1328; Laws 1980, LB 849, § 8; Laws 2007, LB471, § 6.
Effective date May 17, 2007.

81-8,135 Licensee; reports; contents; gross receipts tax; amounts. Every licensee conducting or holding any mixed martial arts, wrestling, or boxing match shall furnish to the State Athletic Commissioner a written report showing the articles of agreement between the contestants, the number of tickets sold for each contest, the amount of the gross receipts thereof, the gross receipts from sale of any television rights, and such other matters as the commissioner shall prescribe. Within such time the licensee shall pay to the commissioner a tax of five percent of the total gross receipts of any professional mixed martial arts, wrestling, or boxing match or exhibition, exclusive of state and federal taxes, except the gross receipts from sale of television rights, and five percent of such rights, and five percent of the total gross receipts of any amateur mixed martial arts or boxing match or exhibition, exclusive of state and federal taxes, except that if such match or exhibition is conducted as an incidental feature in any event or entertainment of a different character, such portion of the total receipts shall be paid to the state as the commissioner may determine, or as may be fixed by rule adopted under section 81-8,139.

Source: Laws 1957, c. 382, § 8, p. 1329; Laws 1961, c. 434, § 1, p. 1349; Laws 1963, c. 520, § 1, p. 1638; Laws 1969, c. 778, § 4, p. 2951; Laws 1980, LB 849, § 9; Laws 2007, LB471, § 7.
Effective date May 17, 2007.

81-8,138 Contestants; compensation; when payable; fake contests. No contestant in any match or exhibition shall be paid for services until the same are rendered, and should it be determined by the State Athletic Commissioner that a contestant did not give an honest exhibition of his or her skill, he or she shall not be paid. Any contestant who shall participate in any sham or fake boxing or mixed martial arts match or exhibition shall be disqualified and shall not thereafter be permitted to contend in any match or exhibition in this state, and any contestant who shall participate in any sham or fake boxing or mixed martial arts match or exhibition shall be guilty of a violation of sections 81-8,128 to 81-8,142.01.

Source: Laws 1957, c. 382, § 11, p. 1330; Laws 1980, LB 849, § 12; Laws 2007, LB471, § 8.
Effective date May 17, 2007.

81-8,139 State Athletic Commissioner; rules and regulations; prescribe; powers. The State Athletic Commissioner shall make such rules and regulations for the administration and enforcement of sections 81-8,128 to 81-8,142.01 as he or she may deem necessary. Such rules and regulations shall include, but not be limited to, the establishment of written criteria for the granting and revoking of licenses, the setting of license fees, and the qualification requirements for those to be licensed as referees, physicians, managers, matchmakers, and professional wrestling, boxing, mixed martial arts, or sparring match or exhibition judges. He or she shall have the power and may control and limit the number of mixed martial arts, wrestling, boxing, or sparring matches or exhibitions given, or to be held, each year, or within one week, in any city or town, or by any organization. He or she may reprimand any amateur or professional athlete or any official or suspend for a period, not to exceed one year, his or her right to participate in any match or exhibition conducted by any licensee for unsportsmanlike conduct while engaged in or arising directly from any match or exhibition, failure to compete in good faith, engaging in any sham match or exhibition, or the use of threatening and abusive language toward officials, other contestants, or spectators.

Source: Laws 1957, c. 382, § 12, p. 1330; Laws 1975, LB 5, § 1; Laws 1980, LB 849, § 13; Laws 2002, LB 482, § 5; Laws 2007, LB471, § 9.
Effective date May 17, 2007.

81-8,139.01 Athletic Advisory Committee; created; members; qualifications; expenses; duties; appeal. (1) An advisory committee is hereby created which shall be known as the Athletic Advisory Committee. The Governor shall appoint six persons to the committee. The members shall be selected on their experience, training, and interest in mixed martial arts, boxing, and wrestling. One member shall be or shall have been active in amateur boxing, one member shall be or shall have been active in mixed martial arts, one member shall be or shall have been active in professional wrestling, one member shall be or shall have been active in professional boxing, one member shall be a medical doctor with ringside experience, and one member shall be an at-large member. The members shall serve at the pleasure of the Governor, and the commissioner may recommend individuals to serve on the advisory committee. The members shall receive no salaries but shall receive reimbursement for their expenses as provided in sections 81-1174 to 81-1177. The committee shall meet and be located within the Charitable Gaming Division of the Department of Revenue. The committee may exercise and perform its powers and duties at any location in the state. The committee shall review the rules and regulations drawn up by the commissioner pursuant to section 81-8,139 and shall make recommendations and give advice regarding any proposed or adopted rules and regulations.

(2) The Athletic Advisory Committee shall serve as an appeals board which shall hear and determine all cases of parties who contest any of the State Athletic Commissioner's decisions. The procedure for such appeal shall be designated in the commissioner's rules and regulations, and the decision of the committee shall be by a majority vote of the committee. Any party who wishes to appeal from the committee's decision may appeal the decision, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1980, LB 849, § 18; Laws 1988, LB 352, § 170; Laws 1993, LB 397, § 3; Laws 2004, LB 1033, § 1; Laws 2007, LB471, § 10.
Effective date May 17, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

(o) PROFESSIONAL LANDSCAPE ARCHITECTS

81-8,194 Board; fees; disposition; State Board of Landscape Architects Cash Fund; created. The board shall establish fees of not less than one hundred nor more than three hundred dollars for applications for registration, examinations, certificates of registration, reciprocal registrations, and renewals based on the administration costs incurred by the board. The board shall collect and account for such fees and pay the same into the state treasury and which, by the State Treasurer, shall be credited to the State Board of Landscape Architects Cash Fund which is hereby created.

Source: Laws 1967, c. 565, § 11, p. 1863; Laws 1971, LB 98, § 4; Laws 1984, LB 477, § 5; Laws 2007, LB396, § 1.
Effective date May 17, 2007.

(p) TORT CLAIMS, STATE CLAIMS BOARD,
AND RISK MANAGEMENT PROGRAM

81-8,219 State Tort Claims Act; claims exempt. The State Tort Claims Act shall not apply to:

(1) Any claim based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute, rule, or regulation, whether or not such statute, rule, or regulation is valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion is abused;

(2) Any claim arising with respect to the assessment or collection of any tax or fee, or the detention of any goods or merchandise by any law enforcement officer;

(3) Any claim for damages caused by the imposition or establishment of a quarantine by the state whether such quarantine relates to persons or property;

(4) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

(5) Any claim by an employee of the state which is covered by the Nebraska Workers' Compensation Act;

(6) Any claim based on activities of the Nebraska National Guard when such claim is cognizable under the Federal Tort Claims Act, 28 U.S.C. 2674, or the National Guard Tort Claims Act of the United States, 32 U.S.C. 715, or when such claim accrues as a result of active federal service or state service at the call of the Governor for quelling riots and civil disturbances;

(7) Any claim based upon the failure to make an inspection or making an inadequate or negligent inspection of any property other than property owned by or leased to the state to determine whether the property complies with or violates any statute, ordinance, rule, or regulation or contains a hazard to public health or safety unless the state had reasonable notice of such hazard or the failure to inspect or inadequate or negligent inspection constitutes a reckless disregard for public health or safety;

(8) Any claim based upon the issuance, denial, suspension, or revocation of or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, or order. Such claim shall also not be filed against a state employee acting within the scope of his or her office. Nothing in this subdivision shall be construed to limit the state's liability for any claim based upon the negligent execution by a state employee in the issuance of a certificate of title under the Motor Vehicle Certificate of Title Act and the State Boat Act;

(9) Any claim arising out of the malfunction, destruction, or unauthorized removal of any traffic or road sign, signal, or warning device unless it is not corrected by the governmental entity responsible within a reasonable time after actual or constructive notice of such malfunction, destruction, or removal. Nothing in this subdivision shall give rise to liability arising from an act or omission of any governmental entity in placing or removing any traffic or road signs, signals, or warning devices when such placement or removal is the result of a discretionary act of the governmental entity;

(10) Any claim arising out of snow or ice conditions or other temporary conditions caused by nature on any highway as defined in section 60-624, bridge, public thoroughfare, or other state-owned public place due to weather conditions. Nothing in this subdivision shall be construed to limit the state's liability for any claim arising out of the operation of a motor vehicle by an employee of the state while acting within the course and scope of his or her employment by the state;

(11) Any claim arising out of the plan or design for the construction of or an improvement to any highway as defined in such section or bridge, either in original construction or any improvement thereto, if the plan or design is approved in advance of the construction or improvement by the governing body of the governmental entity or some other body or employee exercising discretionary authority to give such approval;

(12) Any claim arising out of the alleged insufficiency or want of repair of any highway as defined in such section, bridge, or other public thoroughfare. Insufficiency or want of repair shall be construed to refer to the general or overall condition and shall not refer to a spot or localized defect. The state shall be deemed to waive its immunity for a claim due to a spot or localized defect only if the state has had actual or constructive notice of the defect within a reasonable time to allow repair prior to the incident giving rise to the claim; or

(13)(a) Any claim relating to recreational activities on property leased, owned, or controlled by the state for which no fee is charged (i) resulting from the inherent risk of the recreational activity, (ii) arising out of a spot or localized defect of the premises unless the spot or localized defect is not corrected within a reasonable time after actual or constructive notice of the spot or localized defect, or (iii) arising out of the design of a skatepark or bicycle motocross

park constructed for purposes of skateboarding, inline skating, bicycling, or scootering that was constructed or reconstructed, reasonably and in good faith, in accordance with generally recognized engineering or safety standards or design theories in existence at the time of the construction or reconstruction. For purposes of this subdivision, the state shall be charged with constructive notice only when the failure to discover the spot or localized defect of the premises is the result of gross negligence.

(b) For purposes of this subdivision:

(i) Recreational activities include, but are not limited to, whether as a participant or spectator: Hunting, fishing, swimming, boating, camping, picnicking, hiking, walking, running, horseback riding, use of trails, nature study, waterskiing, winter sports, use of playground equipment, biking, roller blading, skateboarding, golfing, athletic contests; visiting, viewing, or enjoying entertainment events, festivals, or historical, archaeological, scenic, or scientific sites; and similar leisure activities;

(ii) Inherent risk of recreational activities means those risks that are characteristic of, intrinsic to, or an integral part of the activity;

(iii) Gross negligence means the absence of even slight care in the performance of a duty involving an unreasonable risk of harm; and

(iv) Fee means a fee to participate in or be a spectator at a recreational activity. A fee shall include payment by the claimant to any person or organization other than the state only to the extent the state retains control over the premises or the activity. A fee shall not include payment of a fee or charge for parking or vehicle entry.

(c) This subdivision, and not subdivision (7) of this section, shall apply to any claim arising from the inspection or failure to make an inspection or negligent inspection of premises owned or leased by the state and used for recreational activities.

Source: Laws 1969, c. 756, § 11, p. 2848; Laws 1971, LB 28, § 5; Laws 1986, LB 811, § 142; Laws 1988, LB 864, § 30; Laws 1992, LB 262, § 11; Laws 1993, LB 370, § 482; Laws 1993, LB 170, § 9; Laws 1999, LB 228, § 2; Laws 2004, LB 560, § 44; Laws 2005, LB 276, § 111; Laws 2007, LB564, § 4. Effective date May 17, 2007.

Cross Reference

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

Nebraska Workers' Compensation Act, see section 48-1,110.

State Boat Act, see section 37-1291.

81-8,234 Skatepark and bicycle motocross park; sign required; warning notice. (1) The state shall post and maintain a sign at each skatepark and bicycle motocross park sponsored by the state containing the following warning notice: Under Nebraska law, the state is not liable for an injury to or the death of a participant in recreational activities resulting from the inherent risks of the recreational activities pursuant to section 81-8,219.

(2) The absence of a sign shall not give rise to liability on the part of the state.

Source: Laws 2007, LB564, § 5.
Effective date May 17, 2007.

81-8,235 Act, how cited. Sections 81-8,209 to 81-8,235 shall be known and may be cited as the State Tort Claims Act.

Source: Laws 1969, c. 756, § 27, p. 2853; Laws 1984, LB 590, § 3; Laws 2007, LB564, § 6. Effective date May 17, 2007.

81-8,239.01 Risk Management Program; risk management and state claims division of the Department of Administrative Services; established; Risk Manager; powers and duties. (1) For purposes of sections 81-8,239.01 to 81-8,239.08 and 81-8,239.11, unless the context otherwise requires, the definition of state agencies found in section 81-8,210 shall apply, except that such term shall not include the Board of Regents of the University of Nebraska.

(2) There is hereby established a division within the Department of Administrative Services to be known as the risk management and state claims division. The division shall be headed by the Risk Manager who shall be appointed by the Director of Administrative Services. The division shall be responsible for the Risk Management Program, which program is hereby created. The program shall consist of the systematic identification of exposures to risk of loss as provided in sections 11-201 to 11-203, 13-911, 25-2165, 43-1320, 44-1615, 44-1616, 48-194, 48-197, 48-1,103, 48-1,104, 48-1,107, 48-1,109, 81-8,212, 81-8,220, 81-8,225, 81-8,226, 81-8,233, 81-8,239.01 to 81-8,239.08, 81-8,239.11, and 81-8,300 and shall include the appropriate methods for dealing with such exposures in relation to the state budget pursuant to such sections. Such program shall be administered by the Risk Manager and shall include the operations of the State Claims Board and other operations provided in such sections.

(3) Under the Risk Management Program, the Risk Manager shall have the authority and responsibility to:

- (a) Employ any personnel necessary to administer the Risk Management Program;
- (b) Develop and maintain loss and exposure data on all state property and liability risks;
- (c) Develop and recommend risk reduction or elimination programs for the state and its agencies and establish, implement, and monitor a statewide safety program;
- (d) Determine which risk exposures shall be insured and which risk exposures shall be self-insured or assumed by the state;
- (e) Establish standards for the purchase of necessary insurance coverage or risk management services at the lowest costs, consistent with good underwriting practices and sound risk management techniques;
- (f) Be the exclusive negotiating and contracting agency to purchase insurance or risk management services and, after consultation with the state agency for which the insurance or services are purchased, enter into such contracts on behalf of the state and its agencies, officials, and employees to the extent deemed necessary and in the best interest of the state, and authorize payment for such purchase out of the appropriate funds created by section 81-8,239.02;

(g) Determine whether the state suffered a loss for which self-insured property loss funds have been created and authorize and administer payments for such loss from the State Self-Insured Property Fund for the purpose of replacing or rebuilding state property;

(h) Perform all duties assigned to the Risk Manager under the Nebraska Workers' Compensation Act and sections 11-201 to 11-203, 81-8,239.05, 81-8,239.07, 81-8,239.11, and 84-1601 to 84-1615;

(i) Approve the use of risk management pools by any department, agency, board, bureau, commission, or council of the State of Nebraska; and

(j) Recommend to the Legislature such legislation as may be necessary to carry out the purposes of the Risk Management Program and make appropriation requests for the administration of the program and the funding of the separate funds administered by the Risk Manager.

(4) No official or employee of any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act shall be considered a state official or employee for purposes of sections 81-8,239.01 to 81-8,239.06.

Source: Laws 1981, LB 273, § 23; Laws 1986, LB 811, § 143; Laws 1986, LB 1208, § 1; Laws 1987, LB 398, § 49; Laws 1989, LB 326, § 2; Laws 1989, LB 77, § 1; Laws 1989, LB 303, § 7; Laws 1991, LB 81, § 7; Laws 1992, LB 169, § 3; Laws 1992, LB 560, § 2; Laws 1992, Third Spec. Sess., LB 14, § 7; Laws 1996, LB 1248, § 2; Laws 1996, LB 1252, § 1; Laws 1999, LB 87, § 93; Laws 2001, LB 3, § 1; Laws 2007, LB256, § 6.
Effective date September 1, 2007.

Cross Reference

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Nebraska Workers' Compensation Act, see section 48-1,110.

81-8,239.02 State Insurance Fund; State Self-Insured Property Fund; State Self-Insured Indemnification Fund; State Self-Insured Liability Fund; created; purposes. The following separate permanent revolving funds are established in the state treasury for use under the Risk Management Program according to the purposes for which each fund is established:

(1) The State Insurance Fund is hereby created for the purpose of purchasing insurance to cover property, fidelity, and liability risks of the state and workers' compensation claims against the state and other risks to which the state or its agencies, officials, or employees are exposed and for paying related expenses. The fund may receive deposits from assessments against state agencies to provide insurance coverage as directed by the Risk Manager. The Risk Manager may retain in the fund sufficient money to pay for any deductibles, self-insured retentions, or copayments as may be required by such insurance policies;

(2) The State Self-Insured Property Fund is hereby created for the purpose of replacing, repairing, or rebuilding state property which has incurred damage or is suffering other loss not fully covered by insurance and for paying related expenses. The fund may receive deposits from assessments against state agencies to provide property coverage as directed by the

Risk Manager. The Risk Manager may assess state agencies to provide self-insured property coverage;

(3) The State Self-Insured Indemnification Fund is hereby created for the purpose of paying indemnification claims under section 81-8,239.05. Indemnification claims shall include payments for awards, settlements, and associated costs, including appeal bonds and reasonable costs associated with a required appearance before any tribunal. The fund may receive deposits from assessments against state agencies to pay for the costs associated with providing and supporting indemnification claims. The creation of this fund shall not be interpreted as expanding the liability exposure of the state or its agencies, officials, or employees; and

(4) The State Self-Insured Liability Fund is hereby created for the purpose of paying compensable liability and fidelity claims against the state or its agencies, officials, or employees which are not fully covered by insurance and for which there is insufficient agency funding and for which a legislative appropriation is made under the provisions of section 81-8,239.11. The creation of this fund shall not be interpreted as expanding the liability exposure of the state or its agencies, officials, or employees. The Risk Manager shall report all claims and judgments paid from the State Self-Insured Liability Fund to the Clerk of the Legislature annually. The report shall include the name of the claimant, the amount claimed and paid, and a brief description of the claim, including any agency, program, and activity under which the claim arose. Any member of the Legislature may receive a copy of the report by making a request to the Risk Manager.

Source: Laws 1981, LB 273, § 24; Laws 1986, LB 811, § 144; Laws 1986, LB 1208, § 2; Laws 1989, LB 77, § 2; Laws 1994, LB 1211, § 4; Laws 1996, LB 1248, § 3; Laws 2001, LB 3, § 2; Laws 2005, LB 485, § 4; Laws 2007, LB256, § 8.
Effective date September 1, 2007.

81-8,239.03 Risk Manager; present budget request; contents; deficiency appropriation; procedure; investment. The Risk Manager shall present a budget request as provided in section 81-1113 for the Risk Management Program which shall separately state the amount requested for the Tort Claims Fund, State Insurance Fund, State Self-Insured Property Fund, State Self-Insured Indemnification Fund, and Workers' Compensation Claims Revolving Fund, and such budget shall be based on the projected needs for such funds. If the Risk Manager does not assess state agencies for any of the funds listed in this section, the amount of expenditures paid from the fund on behalf of any non-general-fund agency shall be separately stated and paid into the funds from an appropriation to such non-general-fund agency. If the amount of money in any of such funds is not sufficient to pay any awards or judgments authorized by sections 48-192 to 48-1,109 or the State Tort Claims Act, the Risk Manager shall immediately advise the Legislature and request an emergency appropriation to satisfy such awards and judgments. Any money in such funds 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 1981, LB 273, § 25; Laws 1986, LB 811, § 145; Laws 1988, LB 864, § 57; Laws 1994, LB 1211, § 5; Laws 1995, LB 7, § 112; Laws 2007, LB256, § 9.
Effective date September 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.
State Tort Claims Act, see section 81-8,235.

81-8,239.04 Money or property recovered by state; disposition. All money or property recovered by or returned to the state, including but not limited to dividends, money recovered pursuant to litigation, or the salvage value of damaged property for damages relating to either a liability or property loss for which money from the State Insurance Fund, State Self-Insured Property Fund, State Self-Insured Indemnification Fund, State Self-Insured Liability Fund, Workers' Compensation Claims Revolving Fund, or Tort Claims Fund has been paid, shall be deposited in the respective fund, except that such money or property recovered under the terms of an insurance policy, the premiums for which were paid solely by a cash fund agency and purchased at its request, shall be deposited in the respective cash fund.

Source: Laws 1981, LB 273, § 26; Laws 1986, LB 811, § 146; Laws 1994, LB 1211, § 6; Laws 2007, LB256, § 10.
Effective date September 1, 2007.

81-8,239.05 Indemnification of state officials and employees; when; Attorney General; duties; report. (1) The State of Nebraska shall indemnify its officials and employees and its past officials and employees for money damages and reasonable costs incurred as a result of an act or omission occurring in the course and scope of employment of such official or employee after May 22, 1981. Such official's or employee's right to indemnification shall include the payments of awards, settlements, and associated costs, including appeal bonds and reasonable costs associated with a required appearance before any tribunal.

(2) Subsection (1) of this section shall not apply in case of malfeasance in office or willful or wanton neglect of duty. This section shall not be interpreted as an expansion of any state official's or employee's personal liability.

(3) The Attorney General shall notify the Risk Manager when an official or employee is being represented by the Attorney General or has engaged competent counsel approved by the Attorney General. The reasonable costs of litigation, including appeal bonds, or the reasonable costs of any appearance before any tribunal shall be paid by the Risk Manager from the State Self-Insured Indemnification Fund.

(4) The Attorney General shall file copies of all awards and settlements and any final court approval with the Risk Manager and shall request that the Risk Manager make the required payments, if funds are available, from the State Self-Insured Indemnification Fund, except that any portion of an award or settlement which is for punitive damages may only be paid

with the approval of the Legislature. The official or employee may file a claim under the State Miscellaneous Claims Act if payment is not made.

(5) The Risk Manager shall report all claims and judgments paid from the State Self-Insured Indemnification Fund to the Clerk of the Legislature annually. The report shall include the name of the claimant, the amount claimed and paid, and a brief description of the claim, including any agency, program, and activity under which the claim arose. Any member of the Legislature may receive a copy of the report by making a request to the Risk Manager.

Source: Laws 1981, LB 273, § 27; Laws 1986, LB 1208, § 3; Laws 1989, LB 77, § 3; Laws 2007, LB256, § 11.
Effective date September 1, 2007.

Cross Reference

State Miscellaneous Claims Act, see section 81-8,294.

81-8,239.07 Risk Manager; self-insure; risk management services; procure insurance; amount of protection; premium; payments. The Risk Manager, acting as agent for the state agencies, may (1) self-insure and contract for related risk management services, (2) purchase a liability insurance policy or policies, or (3) use any combination of self-insurance and insurance to protect the agencies and their employees and other persons authorized to operate a vehicle by an agency against loss occasioned by negligence in the operation of any trucks, automobiles, snowplows, road graders, or other vehicles. Any such policy shall be purchased by public bidding conducted by the Risk Manager upon terms and forms prepared by him or her and shall have limits for death, bodily injury, and property damage that are the same as would be required by law for a private individual. The premium on the policy or policies shall be paid by the Risk Manager from the State Insurance Fund created in section 81-8,239.02. The Risk Manager shall authorize and administer the payment of self-insured losses and payment for risk management services from the State Insurance Fund, State Self-Insured Property Fund, State Self-Insured Indemnification Fund, or State Self-Insured Liability Fund as appropriate.

Source: Laws 1967, c. 379, § 2, p. 1190; Laws 1969, c. 756, § 32, p. 2854; Laws 1969, c. 513, § 2, p. 2102; Laws 1981, LB 273, § 16; R.S.1943, (1988), § 60-1008; Laws 1989, LB 326, § 1; Laws 2007, LB256, § 12.
Effective date September 1, 2007.

81-8,239.11 Settlements and judgments; state agency; Attorney General; filing required; insufficient funds; Risk Manager; duties. A state agency head shall file copies of all settlements, and a state agency head or the Attorney General shall file copies of all final, nonappealable judgments, of all self-insured liability claims with the Risk Manager. If the state agency has insufficient funds to pay the settlement or judgment, the state agency shall notify the Risk Manager. The Risk Manager shall then submit the settlement or judgment to the Legislature in the same manner as provided in the State Miscellaneous Claims Act. The Legislature shall review the settlement or judgment and make an appropriation if appropriate.

Source: Laws 2007, LB256, § 7.
Effective date September 1, 2007.

Cross Reference

State Miscellaneous Claims Act, see section 81-8,294.

(v) STATE MISCELLANEOUS CLAIMS ACT

81-8,294 Act, how cited. Sections 81-8,294 to 81-8,301 shall be known and may be cited as the State Miscellaneous Claims Act.

Source: Laws 1988, LB 864, § 44; Laws 2007, LB339, § 2.
Effective date September 1, 2007.

81-8,300.01 Statute of limitation. Claims described in subdivisions (4) and (5) of section 81-8,297 and claims relating to expiration of state warrants shall have no time bar to recovery. Except as provided in section 25-213, all other claims permitted under the State Miscellaneous Claims Act shall be forever barred unless the claim is filed with the Risk Manager within two years after the time the claim accrued.

Source: Laws 2007, LB339, § 3.
Effective date September 1, 2007.

ARTICLE 10

STATE-OWNED MOTOR VEHICLES

Section.

81-1021. Identification requirements; exceptions.

81-1021 Identification requirements; exceptions. (1) All motor vehicles acquired by the State of Nebraska shall be indelibly and conspicuously lettered, in plain letters of a contrasting color or reflective material:

(a) On each side thereof with the words State of Nebraska and following such words the name of whatever board, department, bureau, division, institution, including the University of Nebraska or state college, office, or other state expending agency of the state to which the motor vehicle belongs; and

(b) On the back thereof with the words State of Nebraska.

(2) This section shall not apply to motor vehicles used or controlled by:

(a) The Nebraska State Patrol, the Public Service Commission, the Game and Parks Commission, deputy state sheriffs employed by the Nebraska Brand Committee and State Fire Marshal for state law enforcement purposes, inspectors employed by the Nebraska Liquor Control Commission, and persons employed by the Tax Commissioner for state revenue enforcement purposes, the exemption for state law enforcement purposes and state revenue enforcement purposes being confined strictly to the seven agencies specifically named;

(b) The Department of Health and Human Services or the Department of Correctional Services for the purpose of apprehending and returning escaped offenders or parole violators

to facilities in the Department of Correctional Services and transporting offenders and personnel of the Department of Correctional Services and patients and personnel of the Department of Health and Human Services who are engaged in off-campus program activities;

(c) The Military Department;

(d) Vocational rehabilitation counselors and the Department of Health and Human Services for the purposes of communicable disease control, for the prevention and control of those communicable diseases which endanger the public health, or used by the Department of Health and Human Services in the enforcement of drug control laws or for other investigation purposes;

(e) The Department of Agriculture for special investigative purposes;

(f) The Nebraska Motor Vehicle Industry Licensing Board for investigative purposes; and

(g) The Insurance Fraud Prevention Division of the Department of Insurance for investigative purposes.

Source: Laws 1939, c. 94, § 2, p. 409; C.S.Supp.,1941, § 60-1201; R.S.1943, § 60-1001; Laws 1951, c. 202, § 1, p. 758; Laws 1951, c. 203, § 1, p. 759; Laws 1957, c. 278, § 1, p. 1008; Laws 1959, c. 300, § 1, p. 1127; Laws 1965, c. 390, § 1, p. 1247; Laws 1969, c. 512, § 1, p. 2099; Laws 1969, c. 513, § 1, p. 2100; Laws 1972, LB 1295, § 1; Laws 1973, LB 201, § 1; Laws 1973, LB 563, § 5; Laws 1975, LB 253, § 1; Laws 1984, LB 933, § 1; R.S.1943, (1988), § 60-1001; Laws 1993, LB 370, § 484; Laws 1993, LB 575, § 47; Laws 1996, LB 1044, § 862; Laws 1996, LB 1155, § 79; Laws 1999, LB 326, § 11; Laws 2007, LB296, § 753.
Operative date July 1, 2007.

ARTICLE 11

DEPARTMENT OF ADMINISTRATIVE SERVICES

(a) GENERAL PROVISIONS

Section.

81-1108.22. State building division; responsibility; office space outside the State Capitol; rental; approval; required; lease contract; filed; administrator; duties; State Building Revolving Fund; created; use; investment; applicability of section, when.

81-1108.43. Capital construction project; prohibited acts; exceptions; warrant; when issued.

81-1139.01. Stone Office Building; Department of Administrative Services; Department of Health and Human Services; limitations.

(c) FORMS MANAGEMENT PROGRAM

81-1162. Repealed. Laws 2007, LB 256, § 17.

81-1163. Repealed. Laws 2007, LB 256, § 17.

81-1164. Repealed. Laws 2007, LB 256, § 17.

81-1165. Repealed. Laws 2007, LB 256, § 17.

81-1166. Repealed. Laws 2007, LB 256, § 17.

81-1167. Repealed. Laws 2007, LB 256, § 17.

81-1168. Repealed. Laws 2007, LB 256, § 17.

81-1169. Repealed. Laws 2007, LB 256, § 17.

(i) NEBRASKA PUBLIC SAFETY COMMUNICATION SYSTEM REVOLVING FUND 81-11,105. Nebraska Public Safety Communication System Revolving Fund; created; use; investment.

(a) GENERAL PROVISIONS

81-1108.22 State building division; responsibility; office space outside the State Capitol; rental; approval; required; lease contract; filed; administrator; duties; State Building Revolving Fund; created; use; investment; applicability of section, when. (1) The division shall have the responsibility of providing office space in leased and state-owned buildings in the proximity of the State Capitol and in other locations.

(2) When any board, agency, commission, or department of the state government not otherwise specifically authorized by law desires to use funds available for the purpose of renting office space outside of the State Capitol, it shall submit a request to the Director of Administrative Services. If the director approves the lease, the terms and location shall be approved by the director and the administrator in writing and the leases shall be entered into and administered by the administrator on behalf of the board, agency, commission, or department. A copy of all such lease contracts shall be kept on file by the state building division and shall be open to inspection by the Legislature and the public during normal business hours.

(3)(a) The administrator shall develop a system of charges to cover basic rental, maintenance, renovations, and operation of such leased and owned properties. The charges to state agencies, boards, commissions, or departments of state government shall be paid from funds available for the purpose of renting space on a regular basis and placed, as applicable, in the State Building Revolving Fund and the State Building Renewal Assessment Fund. The administrator shall make payments for basic rentals, renovations, and maintenance and operational costs of all leased and owned buildings from the State Building Revolving Fund except for expenses relating to security provided by the Nebraska State Patrol as provided in subdivision (b) of this subsection.

(b) The State Building Revolving Fund is created. The fund shall be administered by the administrator. The fund shall consist of rental charges and other receipts collected pursuant to contractual agreements between the state building division and other entities as authorized by law. The fund shall only be used to support the operation of the state building division as provided by law, except that the Legislature shall make fund transfers each fiscal year through the budget process from the State Building Revolving Fund to the Capitol Security Revolving Fund to help pay non-general-fund costs associated with the operation of the state capitol security division of the Nebraska State Patrol. Any money in the State Building Revolving Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(4) The charges for such leased and owned properties shall only be adjusted by the administrator on July 1. Prior to any adjustment in the system of charges, the Department

of Administrative Services, on or before December 1 of the year preceding the effective date of such adjustment, shall provide written notification to the Committee on Building Maintenance, the Clerk of the Legislature, and the Legislative Fiscal Analyst of the proposed adjustment to the system of charges.

(5) Commencing on April 18, 1992, all leases of real property entered into by any state agency, board, commission, or department shall be subject to this section. Leases held by a state agency, board, commission, or department on such date shall be valid until the lease contract is terminated or is subject to renewal. The division shall monitor all such leases and determine when the lease is subject to renewal. Once the determination is made, the division shall cancel the lease as of the renewal date and shall treat the need of the agency, board, commission, or department as an original request for space and subject to this section. This subsection shall not apply to (a) state-owned facilities to be rented to state agencies or other parties by the University of Nebraska, the Nebraska state colleges, the Department of Aeronautics, the Department of Roads, and the Board of Educational Lands and Funds, (b) facilities to be leased for use by the University of Nebraska, the Nebraska state colleges, and the Board of Educational Lands and Funds, (c) facilities to be leased for nonoffice use by the Department of Roads, or (d) facilities controlled by the State Department of Education, which were formerly controlled by the Nebraska School for the Visually Handicapped, to be rented to state agencies or other parties by the department.

Source: Laws 1961, c. 353, § 1, p. 1113; Laws 1963, c. 421, § 1, p. 1347; R.R.S.1943, § 72-701.08; Laws 1974, LB 1048, § 13; Laws 1975, LB 359, § 13; Laws 1979, LB 576, § 5; Laws 1992, LB 1241, § 23; Laws 1995, LB 530, § 11; Laws 1998, LB 1100, § 22; Laws 1999, LB 813, § 57; Laws 2004, LB 439, § 22; Laws 2004, LB 1092, § 9; Laws 2007, LB322, § 26.
Operative date July 1, 2007.

Cross Reference

Committee on Building Maintenance, see section 81-185.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

81-1108.43 Capital construction project; prohibited acts; exceptions; warrant; when issued. No state agency or department shall perform for itself any of the services normally performed by a professional engineer or architect in the preparation of plans and specifications for the construction, reconstruction, or alteration of any building or in the administration of the construction documents and final approval of the project when the total project cost is four hundred thousand dollars or more, and no state agency shall employ its own work force for any such construction, reconstruction, or alteration of capital facilities when the total project cost is fifty thousand dollars or more. The Department of Administrative Services shall adjust the dollar amounts in this section every four years beginning January 1, 2002, to account for inflationary and market changes. The adjustments shall be based on percentage changes in a construction cost index and any other published index relevant to operations and utilities costs, as selected by the department.

This section shall not apply to the Department of Roads or to any public power district, public power and irrigation district, irrigation district, or metropolitan utilities district. If,

during the program statement review provided for under section 81-1108.41, it is determined that existing or standard plans and specifications are available or required for the project, the division may authorize an exemption from this section. The Director of Administrative Services shall not issue any warrant in payment for any work on a capital construction project unless the state agency or department files a certificate that it has complied with the provisions of this section.

Source: Laws 1969, c. 772, § 6, p. 2924; R.R.S.1943, § 81-1108.08; Laws 1974, LB 1048, § 36; Laws 1979, LB 38, § 2; Laws 1995, LB 530, § 15; Laws 1997, LB 622, § 122; Laws 1998, LB 1129, § 21; Laws 2007, LB256, § 13.
Effective date September 1, 2007.

81-1139.01 Stone Office Building; Department of Administrative Services; Department of Health and Human Services; limitations. Until June 30, 1993, the Department of Administrative Services shall be limited to the same rental rate on the Stone Office Building at the Norfolk Regional Center as existed on January 1, 1992. The Department of Health and Human Services shall be limited to reimbursement from the counties maintaining office space in the Stone Office Building pursuant to section 68-130 in the same amount such counties paid for rental of such space on January 1, 1992.

Source: Laws 1992, LB 1241, § 2; Laws 1996, LB 1044, § 865; Laws 2007, LB296, § 754.
Operative date July 1, 2007.

(c) FORMS MANAGEMENT PROGRAM

81-1162 Repealed. Laws 2007, LB 256, § 17.

81-1163 Repealed. Laws 2007, LB 256, § 17.

81-1164 Repealed. Laws 2007, LB 256, § 17.

81-1165 Repealed. Laws 2007, LB 256, § 17.

81-1166 Repealed. Laws 2007, LB 256, § 17.

81-1167 Repealed. Laws 2007, LB 256, § 17.

81-1168 Repealed. Laws 2007, LB 256, § 17.

81-1169 Repealed. Laws 2007, LB 256, § 17.

(i) NEBRASKA PUBLIC SAFETY COMMUNICATION SYSTEM REVOLVING FUND

81-11,105 Nebraska Public Safety Communication System Revolving Fund; created; use; investment. The Nebraska Public Safety Communication System Revolving Fund is created. The fund shall be established within the Department of Administrative Services and administered by the Chief Information Officer. The fund shall consist of

retainer-fee revenue received from state agencies accessing the Nebraska Public Safety Communication System, as authorized by the Legislature through the budget process. The fund shall only be used to pay for centralized direct costs of administering, operating, and maintaining the Nebraska Public Safety Communication System, including state-owned towers and network equipment. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2007, LB322, § 5.
Operative date July 1, 2007.

Cross Reference

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

ARTICLE 12

DEPARTMENT OF ECONOMIC DEVELOPMENT

(a) GENERAL PROVISIONS

Section.

- 81-1201.04. Commission; members; qualifications; chairperson; coordination.
- 81-1201.05. Commission; members; terms; vacancy; expenses.
- 81-1201.14. Existing Business Assistance Division; duties.
- 81-1201.21. Job Training Cash Fund; created; use; investment.

(j) HOUSING AFFORDABILITY STRATEGY

- 81-1281. Comprehensive housing affordability strategy; established; contents; advisory committee; powers and duties.

(m) MICROENTERPRISE DEVELOPMENT ACT

- 81-12,105.01. Microenterprise Development Cash Fund; created; use; investment.

(p) BUILDING ENTREPRENEURIAL COMMUNITIES ACT

- 81-12,126. Purpose of act.
- 81-12,127. Grant process.
- 81-12,128. Building Entrepreneurial Communities Cash Fund; created; use; investment.

(q) NEBRASKA OPERATIONAL ASSISTANCE ACT

- 81-12,129. Act, how cited.
- 81-12,130. Legislative findings.
- 81-12,131. Terms, defined.
- 81-12,132. Purpose of act.
- 81-12,133. Nebraska Operational Assistance Program; established; department select organization to carry out act; considerations.
- 81-12,134. Appropriation of funds; grant; funding; matching funds.

81-12,135. Annual report.

(a) GENERAL PROVISIONS

81-1201.04 Commission; members; qualifications; chairperson; coordination. The commission shall consist of nine voting members appointed by the Governor. The chairperson of the commission shall be one of the appointed members and shall be chosen by the commission. Each congressional district in Nebraska shall be represented by three members, and the Governor shall solicit nominations for appointments to the commission from recognized economic development groups in Nebraska. The members of the commission shall be representative, to the extent possible, of the various geographic areas of the state and of both the urban and rural population. The director shall serve as an ad hoc nonvoting member of the commission. In appointing the members, the Governor shall seek to create a broad-based commission representative of the Nebraska economy. To achieve this objective the Governor shall appoint individuals from the following private industry sectors:

- (1) Production agriculture;
- (2) At least two individuals from manufacturing, one such individual shall represent a company with no more than seventy-five employees;
- (3) Transportation and logistics;
- (4) Travel and tourism;
- (5) Financial services and insurance;
- (6) Information technology and communications; and
- (7) Biotechnology.

The commission and department are encouraged to involve other essential groups in the work of the commission, including, but not limited to, the (a) University of Nebraska, (b) Department of Agriculture, (c) State Energy Office, (d) educational institutions, (e) Department of Labor, and (f) Nebraska Investment Finance Authority. No more than five voting members of the commission shall belong to the same political party.

The commission shall provide programmatic policy guidance and oversight to the Nebraska Manufacturing Extension Partnership.

Source: Laws 1986, LB 965, § 4; Laws 2007, LB388, § 1.
Effective date September 1, 2007.

81-1201.05 Commission; members; terms; vacancy; expenses. Members of the commission shall serve for terms of four years, except that the members serving on September 1, 2007, may serve for the remainder of their six-year terms. Members shall be limited to two consecutive terms. The director shall serve on the commission for the term of his or her appointment as director. If a vacancy occurs, the Governor shall appoint a representative of the same congressional district, within forty-five working days after the date the vacancy occurs, to finish the unexpired term of the member. The members of the commission shall

serve without compensation but may be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177 for state employees.

Source: Laws 1986, LB 965, § 5; Laws 2007, LB388, § 2.
Effective date September 1, 2007.

81-1201.14 Existing Business Assistance Division; duties. The primary responsibility of the Existing Business Assistance Division shall be to provide assistance to instate businesses. Such assistance shall encourage the startup of new businesses and the retention and expansion of existing businesses. Emphasis shall be placed upon meeting the unique needs of small businesses in the state. Activities of the division shall include, but not be limited to, financial packaging, technical assistance, contacts with existing businesses regarding needs, work force development, job training assistance, export technical assistance, and assistance to businesses in accessing new markets and new technologies.

The division shall avoid duplication with existing programs already in place which assist small businesses and entrepreneurs, and the department and the division shall deliver their programs through, to the extent possible, the Nebraska Business Development Center, the University of Nebraska-Lincoln Food Processing Center, the Nebraska Investment Finance Authority, the Small Business Administration of the federal government, and other related organizations.

Source: Laws 1986, LB 965, § 14; Laws 1987, LB 736, § 7; Laws 1989, LB 639, § 4; Laws 1997, LB 659, § 1; Laws 2007, LB388, § 3.
Effective date September 1, 2007.

Cross Reference

Business Development Partnership Act, see section 81-1272.
Nebraska Investment Finance Authority Act, see section 58-201.
Small Business Development Authority Act, see section 58-301.

81-1201.21 Job Training Cash Fund; created; use; investment. There is hereby created the Job Training Cash Fund. The fund shall be under the direction of the Department of Economic Development. Money may be transferred to the fund pursuant to subdivision (1)(b)(iv) of section 48-621 and from the Cash Reserve Fund at the direction of the Legislature. The department shall establish a subaccount for all money transferred from the Cash Reserve Fund to the Job Training Cash Fund on or after July 1, 2005. Any unexpended or unobligated balance remaining within such subaccount on July 1, 2010, shall be transferred by the State Treasurer to the Cash Reserve Fund no later than July 10, 2010. Any obligated amount not transferred from the subaccount that remains unexpended on July 1, 2009, shall be transferred by the State Treasurer to the Cash Reserve Fund no later than December 31, 2011.

The department shall use the fund to provide reimbursements for job training activities, including employee assessment, preemployment training, on-the-job training, training equipment costs, and other reasonable costs related to helping industry and business locate or expand in Nebraska, or to provide upgrade skills training of the existing labor force necessary to adapt to new technology or the introduction of new product lines.

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 1989, LB 305, § 3; Laws 1994, LB 1066, § 107; Laws 1995, LB 1, § 15; Laws 2000, LB 953, § 11; Laws 2005, LB 427, § 1; Laws 2007, LB322, § 27.
Operative date July 1, 2007.

Cross Reference

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

(j) HOUSING AFFORDABILITY STRATEGY

81-1281 Comprehensive housing affordability strategy; established; contents; advisory committee; powers and duties. (1) The Department of Economic Development shall establish a comprehensive housing affordability strategy. The strategy shall identify needs, consider issues, and make recommendations regarding housing affordability, housing availability, housing accessibility, and housing quality in Nebraska. The department shall submit the strategy to the Governor and the Clerk of the Legislature by October 1, 1991.

(2) The department shall establish a housing advisory committee consisting of individuals and representatives of groups involved with housing issues in Nebraska to assist with the establishment of the strategy. The department shall work with the Governor's Policy Research Office, the Department of Health and Human Services, the Department of Banking and Finance, the Nebraska Investment Finance Authority, and any other public or private agency involved in addressing housing needs in Nebraska.

(3) The strategy shall:

(a) Describe the state's estimated housing needs for the ensuing five-year period and the need for assistance for different types of tenure and for different categories of residents such as very-low-income, low-income, and moderate-income persons, the elderly, single persons, large families, residents of nonmetropolitan areas, and other categories determined to be appropriate by the committee;

(b) Describe the nature and extent of homelessness in the state, providing an estimate of the special needs of various categories of persons who are homeless or threatened with homelessness and a description of the strategy for (i) helping low-income families avoid homelessness, (ii) addressing the emergency shelter and transitional housing needs of the homeless, including an inventory of facilities and services that meet such needs in Nebraska, and (iii) helping homeless persons make the transition to permanent housing;

(c) Describe significant characteristics of the housing market;

(d) Explain whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in Nebraska are affected by public policies, including tax policies affecting land and other property, land-use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment;

(e) Explain the institutional structure, including private industry, nonprofit organizations, and public institutions through which the state will carry out the strategy, assessing the strengths and gaps and describing what will be done to overcome any gaps;

(f) Describe the means of coordination and cooperation among the units of state and local government in the development and implementation of the strategy;

(g) Establish standards and procedures for monitoring housing activities undertaken because of the strategy; and

(h) Include any other information on housing in Nebraska deemed relevant by the Department of Economic Development or the committee.

Source: Laws 1991, LB 825, § 51; Laws 1996, LB 1044, § 866; Laws 2007, LB296, § 755.
Operative date July 1, 2007.

(m) MICROENTERPRISE DEVELOPMENT ACT

81-12,105.01 Microenterprise Development Cash Fund; created; use; investment. (1) The Microenterprise Development Cash Fund is created. The fund shall be administered by the Department of Economic Development. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The State Treasurer shall credit to the fund money as is (a) transferred to the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, (c) donated as gifts, bequests, or other contributions to such fund from public or private entities, and (d) made available by any department or agency of the United States if so directed by such department or agency.

(3) The fund shall be used by the Department of Economic Development for the purpose of carrying out the Microenterprise Development Act.

Source: Laws 2007, LB322, § 37.
Operative date July 1, 2007.

Cross Reference

Microenterprise Development Act, see section 81-1295.

Nebraska Capital Expansion Act, see section 72-1269.

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

(p) BUILDING ENTREPRENEURIAL COMMUNITIES ACT

81-12,126 Purpose of act. The purpose of the Building Entrepreneurial Communities Act is to support economically depressed rural areas of Nebraska in building entrepreneurial communities through grants that will create community capacity to build and sustain programs to generate and retain wealth in the community and region. Specifically, the act will:

(1) Provide education and technical assistance to energize small business development and entrepreneurship;

(2) Provide technical assistance to facilitate small business transfer;

(3) Build community business capacity and leadership programs;

(4) Generate opportunities that will attract and retain young people and families;

- (5) Provide education about philanthropy and intergenerational transfer of wealth;
- (6) Build community endowments to support these activities; and
- (7) Establish community initiatives to attract new residents.

Source: Laws 2005, LB 90, § 2; Laws 2007, LB232, § 1.
Effective date September 1, 2007.
Termination date January 1, 2011.

81-12,127 Grant process. (1) The Department of Economic Development, with assistance provided by the Rural Development Commission, shall establish and administer a grant process to provide grants to local units of government or census tracts that are collaborating on a project related to the purpose of the Building Entrepreneurial Communities Act with priority given to projects that best alleviate chronic economic distress. At least one of the collaborating local units of government or census tracts shall have chronic economic distress as indicated by:

- (a) An unemployment rate which exceeds the statewide average unemployment rate;
- (b) A per capita income below the statewide average per capita income; or
- (c) A population loss between the two most recent federal decennial censuses.

(2) Grants shall not exceed seventy-five thousand dollars per collaborative project. Grant recipients shall have two years to expend the grant funds. No local unit of government shall receive funding for more than one project. Grant recipients shall provide fifty cents of matching funds in cash for each dollar of grant funds, except that in limited resource areas the cash match requirement is twenty-five cents for each dollar of grant funds. Grants shall be awarded directly to one of the local units of government representing the collaborative project. The department shall act as the fiduciary agent for the grants.

(3) Planning grants may be awarded to limited resource areas in amounts not exceeding five thousand dollars for the purpose of establishing collaborations and developing proposals for submission under this section. There is no match requirement for planning grants.

(4) For purposes of this section, limited resource areas means areas that meet at least one of the following criteria:

- (a) A per capita income below the statewide average per capita income by at least twenty percent; or
- (b) A population loss in the previous twenty years of at least twenty percent.

Source: Laws 2005, LB 90, § 3; Laws 2006, LB 1003, § 18; Laws 2007, LB232, § 2.
Effective date September 1, 2007.
Termination date January 1, 2011.

81-12,128 Building Entrepreneurial Communities Cash Fund; created; use; investment. (1) The Building Entrepreneurial Communities Cash Fund is created. The fund shall be administered by the Department of Economic Development. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The State Treasurer shall credit to the fund such money as is (a) transferred to the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, (c) donated as gifts, bequests, or other contributions to such fund from public or private entities, and (d) made available by any department or agency of the United States if so directed by such department or agency.

(3) The fund shall be expended by the Department of Economic Development for the purpose of carrying out the Building Entrepreneurial Communities Act.

Source: Laws 2007, LB322, § 38.
Operative date July 1, 2007.

Cross Reference

Building Entrepreneurial Communities Act, see section 81-12,125.

Nebraska Capital Expansion Act, see section 72-1269.

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

(q) NEBRASKA OPERATIONAL ASSISTANCE ACT

81-12,129 Act, how cited. Sections 81-12,129 to 81-12,135 shall be known and may be cited as the Nebraska Operational Assistance Act.

Source: Laws 2007, LB425, § 1.
Effective date September 1, 2007.

81-12,130 Legislative findings. The Legislature finds and declares that:

(1) Insufficient venture capital resources exist within the State of Nebraska to meet substantial portions of the equity needs of new and high-growth business enterprises;

(2) Nebraska is a net exporter of venture capital;

(3) The venture capital needs of Nebraska business enterprises are not currently being met due to the lack of operational readiness and expertise among new and high-growth business enterprises;

(4) The best and primary role the State of Nebraska can play is creating an effective operational assistance program to assist Nebraska businesses in becoming venture-ready to effectively attract and retain capital in this state in partnership with the private sector;

(5) Entrepreneurs and high-growth business enterprises need technical assistance in understanding equity markets and how to position themselves to receive equity funding; and

(6) Creation of an operational assistance program must be flexible and market driven.

Source: Laws 2007, LB425, § 2.
Effective date September 1, 2007.

81-12,131 Terms, defined. For purposes of the Nebraska Operational Assistance Act, unless the context otherwise requires:

(1) Business enterprise means an individual, corporation, partnership, limited liability company, or joint-stock company with its principal place of business in Nebraska or potentially in Nebraska;

(2) Program means the Nebraska Operational Assistance Program; and

(3) Venture capital means equity financing provided by investors to business enterprises that have the potential for high growth and in which the risk for loss and the potential for profit may be considerable.

Source: Laws 2007, LB425, § 3.
Effective date September 1, 2007.

81-12,132 Purpose of act. The purpose of the Nebraska Operational Assistance Act is to create a program to assist business enterprises in Nebraska in achieving the thresholds necessary for private equity investments.

Source: Laws 2007, LB425, § 4.
Effective date September 1, 2007.

81-12,133 Nebraska Operational Assistance Program; established; department select organization to carry out act; considerations. (1) The Department of Economic Development shall establish the Nebraska Operational Assistance Program.

(2) The program shall assist potential high-growth businesses in establishing a foundation sufficient for the attraction of private equity including, but not limited to, market analysis, executive recruitment, sales and marketing, financial planning, business structure, and intellectual property development. The program may also include, but need not be limited to:

(a) Cooperation with other service entities in facilitating effectiveness of the program including, but not limited to, financial institutions, attorneys, accountants, investment banking firms, established venture capital funds, institutions of higher education, local and regional development organizations, business development centers, business incubators, and utilities;

(b) A statewide system for facilitating venture capital investing with its primary emphasis upon assisting those business enterprises generally seeking up to one million dollars in new equity financing;

(c) Identification and provision of information to investors about investment opportunities in Nebraska business enterprises;

(d) Identification and provision of information to entrepreneurs and high-growth business enterprises about investors seeking investment opportunities;

(e) Service as a clearinghouse and access point for information about venture capital investment opportunities in Nebraska;

(f) Service as the central organization and means of delivering appropriate education and training programs for potential investors in business enterprises;

(g) Facilitation of the formation of private venture capital funds; and

(h) Assistance in the formation of intrastate or industry-specific venture capital networks.

(3)(a) The department shall select a single private, nonprofit organization for the purpose of carrying out the functions of the Nebraska Operational Assistance Act which is either:

(i) Incorporated in the State of Nebraska and exempt for federal tax purposes under section 501(c)(3) of the Internal Revenue Code, as such section existed on January 1, 2007; or

(ii) A Nebraska corporation or Nebraska organization that is exempt from federal taxation under section 501(c)(6) of the Internal Revenue Code, as such section existed on January 1, 2007.

(b) The department, in selecting an organization pursuant to subdivision (a) of this subsection, shall consider, among other factors, the organization's ability to deliver a statewide program and the organization's ability to provide the matching funds described in section 81-12,134.

Source: Laws 2007, LB425, § 5.
Effective date September 1, 2007.

81-12,134 Appropriation of funds; grant; funding; matching funds. The Legislature shall appropriate funds to the Department of Economic Development which shall be awarded as a grant to the private, nonprofit organization selected pursuant to subsection (3) of section 81-12,133 to carry out the purposes of the Nebraska Operational Assistance Act. The department may receive funds from local or federal government, private foundations, or other sources. The private, nonprofit organization shall provide matching funds of at least one-third of all funds appropriated for the Nebraska Operational Assistance Program. The private, nonprofit organization may provide any part of the matching funds as an in-kind contribution.

Source: Laws 2007, LB425, § 6.
Effective date September 1, 2007.

81-12,135 Annual report. The Department of Economic Development shall submit an annual report on its activities under the Nebraska Operational Assistance Act to the Governor and the Clerk of the Legislature on or before January 1 each year.

Source: Laws 2007, LB425, § 7.
Effective date September 1, 2007.

ARTICLE 13

PERSONNEL

(a) STATE PERSONNEL SERVICE

Section.

81-1316. State Personnel System; exemptions.

81-1346. Employee suggestion system program; established; purpose; applicability.

81-1350. Employee suggestion system; award granted; amount.

81-1351. Employee suggestion system; award granted; limitations.

(a) STATE PERSONNEL SERVICE

81-1316 State Personnel System; exemptions. (1) All agencies and personnel of state government shall be covered by sections 81-1301 to 81-1319 and shall be considered subject to the State Personnel System, except the following:

- (a) All personnel of the office of the Governor;
- (b) All personnel of the office of the Lieutenant Governor;
- (c) All personnel of the office of the Secretary of State;
- (d) All personnel of the office of the State Treasurer;
- (e) All personnel of the office of the Attorney General;
- (f) All personnel of the office of the Auditor of Public Accounts;
- (g) All personnel of the Legislature;
- (h) All personnel of the court systems;
- (i) All personnel of the Board of Educational Lands and Funds;
- (j) All personnel of the Public Service Commission;
- (k) All personnel of the Nebraska Brand Committee;
- (l) All personnel of the Commission of Industrial Relations;
- (m) All personnel of the State Department of Education;
- (n) All personnel of the Nebraska state colleges and the Board of Trustees of the Nebraska State Colleges;
- (o) All personnel of the University of Nebraska;
- (p) All personnel of the Coordinating Commission for Postsecondary Education;
- (q) All personnel of the Governor's Policy Research Office, but not to include personnel within the State Energy Office;
- (r) All personnel of the Commission on Public Advocacy;
- (s) All agency heads;
- (t)(i) The Director of Behavioral Health of the Division of Behavioral Health; (ii) the Director of Children and Family Services of the Division of Children and Family Services; (iii) the Director of Developmental Disabilities of the Division of Developmental Disabilities; (iv) the Director of Medicaid and Long-Term Care of the Division of Medicaid and Long-Term Care; (v) the Director of Public Health of the Division of Public Health; and (vi) the Director of Veterans' Homes of the Division of Veterans' Homes;
- (u) The chief medical officer established under section 81-3115, the Administrator of the Office of Juvenile Services, and the chief executive officers of the Beatrice State Developmental Center, Lincoln Regional Center, Norfolk Regional Center, Hastings Regional Center, Grand Island Veterans' Home, Norfolk Veterans' Home, Eastern Nebraska Veterans' Home, Western Nebraska Veterans' Home, Youth Rehabilitation and Treatment Center-Kearney, and Youth Rehabilitation and Treatment Center-Geneva;
- (v) All personnel employed as pharmacists, physicians, psychiatrists, psychologists, service area administrators, or facility operating officers of the Department of Health and Human Services; and

(w) Deputies and examiners of the Department of Banking and Finance and the Department of Insurance as set forth in sections 8-105 and 44-119, except for those deputies and examiners who remain in the State Personnel System.

(2) At each agency head's discretion, up to the following number of additional positions may be exempted from the State Personnel System, based on the following agency size categories:

Number of Agency Employees	Number of Noncovered Positions
less than 25	0
25 to 100	1
101 to 250	2
251 to 500	3
501 to 1000	4
1001 to 2000	5
2001 to 3000	8
3001 to 4000	11
4001 to 5000	14
over 5000	25

The purpose of having such noncovered positions shall be to allow agency heads the opportunity to recruit, hire, and supervise critical, confidential, or policymaking personnel without restrictions from selection procedures, compensation rules, career protections, and grievance privileges. Persons holding the noncovered positions shall serve at the pleasure of the agency head and shall be paid salaries set by the agency head.

(3) No changes to this section or to the number of noncovered positions within an agency shall affect the status of personnel employed on the date the changes become operative without their prior written agreement. A state employee's career protections or coverage by personnel rules and regulations shall not be revoked by redesignation of the employee's position as a noncovered position without the prior written agreement of such employee.

Source: Laws 1967, c. 573, § 16, p. 1896; Laws 1969, c. 802, § 8, p. 3025; Laws 1971, LB 637, § 1; Laws 1987, LB 491, § 13; Laws 1988, LB 1106, § 1; Laws 1996, LB 1044, § 867; Laws 1998, LB 1073, § 165; Laws 2000, LB 654, § 41; Laws 2002, LB 876, § 86; Laws 2002, LB 1062, § 65; Laws 2003, LB 85, § 3; Laws 2003, LB 245, § 16; Laws 2006, LB 994, § 114; Laws 2007, LB296, § 756. Operative date July 1, 2007.

Cross Reference

For other exemptions, see sections 49-14,121 and 72-1242.

81-1346 Employee suggestion system program; established; purpose; applicability. There is hereby established a program to be known as the employee suggestion system to encourage the development of ideas for improving the economy and efficiency of state government and to grant awards for ideas of proper merit and implement them in the governmental process. The employee suggestion system shall apply to all state

personnel except those personnel listed in subdivisions (1)(n), (o), and (s) of section 81-1316, any judge, or any elected official.

Source: Laws 1978, LB 286, § 1; Laws 2007, LB5, § 1.
Effective date September 1, 2007.

81-1350 Employee suggestion system; award granted; amount. Any award granted shall be the greater of one hundred dollars or ten percent of the amount of savings referred to in section 81-1353 but not to exceed the limitations provided for in section 81-1351.

Source: Laws 1978, LB 286, § 5; Laws 1993, LB 44, § 16; Laws 2007, LB5, § 2.
Effective date September 1, 2007.

81-1351 Employee suggestion system; award granted; limitations. Any award granted under the provisions of sections 81-1346 to 81-1354 shall be limited to six thousand dollars unless a larger award is recommended by resolution of the Legislature.

Source: Laws 1978, LB 286, § 6; Laws 2007, LB5, § 3.
Effective date September 1, 2007.

ARTICLE 14

LAW ENFORCEMENT

(a) LAW ENFORCEMENT TRAINING

Section.

81-1401. Terms, defined.

(a) LAW ENFORCEMENT TRAINING

81-1401 Terms, defined. For purposes of sections 81-1401 to 81-1414, unless the context otherwise requires:

(1) Commission means the Nebraska Commission on Law Enforcement and Criminal Justice;

(2) Council means the Nebraska Police Standards Advisory Council;

(3) Handgun means any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand;

(4) Law enforcement agency means the police department or the town marshal in incorporated municipalities, the office of sheriff in unincorporated areas, and the Nebraska State Patrol;

(5)(a) Law enforcement officer means any person who is responsible for the prevention or detection of crime or the enforcement of the penal, traffic, or highway laws of the state or any political subdivision of the state for more than one hundred hours per year and is authorized by law to make arrests and includes, but is not limited to:

(i) A full-time or part-time member of the Nebraska State Patrol;

(ii) A county sheriff;

(iii) A full-time or part-time employee of a county sheriff's office;

(iv) A full-time or part-time employee of a municipal or village police agency; or

(v) A full-time employee of an organized and paid fire department of any city of the metropolitan class who is an authorized arson investigator and whose duties consist of determining the cause, origin, and circumstances of fires or explosions while on duty in the course of an investigation;

(b) Law enforcement officer does not include employees of the Department of Correctional Services, probation officers under the Nebraska Probation System, parole officers appointed by the Parole Administrator, or employees of the Department of Revenue under section 77-366; and

(c) A law enforcement officer shall possess a valid law enforcement officer certificate or diploma, as established by the council, in order to be vested with the authority of this section, but this subdivision does not prohibit an individual from receiving a conditional appointment as an officer pursuant to subsection (2) of section 81-1414;

(6) Director means the director of the Nebraska Law Enforcement Training Center;

(7) Training academy means the training center or such other council-approved law enforcement training facility operated and maintained by a law enforcement agency which offers certification training that meets or exceeds the certification training curriculum of the training center;

(8) Training center means the Nebraska Law Enforcement Training Center; and

(9) Training school means a public or private institution of higher education, including the University of Nebraska, the Nebraska state colleges, and the community colleges of this state, that offers training in a council-approved pre-certification course.

Source: Laws 1969, c. 773, § 1, p. 2925; Laws 1971, LB 929, § 1; Laws 1979, LB 565, § 1; Laws 1980, LB 834, § 63; Laws 1981, LB 205, § 3; Laws 1986, LB 529, § 53; Laws 1996, LB 1055, § 11; Laws 1999, LB 36, § 38; Laws 1999, LB 205, § 1; Laws 2000, LB 994, § 2; Laws 2007, LB334, § 105. Operative date July 1, 2007.

ARTICLE 15

ENVIRONMENTAL PROTECTION

(a) ENVIRONMENTAL PROTECTION ACT

Section.

81-1504.01. Department of Environmental Quality; reports required; contents.

81-1525. Accumulation of junk; failure to remove; violation; penalty.

(b) LITTER REDUCTION AND RECYCLING ACT

81-1534. Act, how cited.

81-1553. Repealed. Laws 2007, LB 79, § 3.

81-1553.01. Litter problem; surveys; department; grant funds; progress report.

(f) LOW-LEVEL RADIOACTIVE WASTE DISPOSAL ACT
81-15,103. Council; financial requirements; adopt rules and regulations; remedial cleanup costs; Radiation Site Closure and Reclamation Fund; Radiation Custodial Care Fund; created; use; investment; agreement with Department of Health and Human Services.

(g) PETROLEUM PRODUCTS AND HAZARDOUS
SUBSTANCES STORAGE AND HANDLING
81-15,123. State Fire Marshal; rules and regulations; considerations; requirements.

(h) WASTEWATER TREATMENT OPERATOR CERTIFICATION ACT
81-15,130. Council; adopt rules and regulations; contents.

(i) WASTE REDUCTION AND RECYCLING
81-15,160. Waste Reduction and Recycling Incentive Fund; created; use; investment; grants; restrictions.

(n) NEBRASKA ENVIRONMENTAL TRUST ACT
81-15,170. Nebraska Environmental Trust Board; created; membership; qualifications; executive director.

(r) TECHNICAL ADVISORY COMMITTEE
81-15,189. Technical advisory committee; members; qualifications; expenses.

(s) NEBRASKA EMERGENCY PLANNING
AND COMMUNITY RIGHT TO KNOW ACT
81-15,210. State Administrator; State Emergency Response Commission; created; members; terms.

(t) PRIVATE ONSITE WASTEWATER TREATMENT SYSTEM
CONTRACTORS CERTIFICATION AND SYSTEM REGISTRATION ACT
81-15,236. Act, how cited.
81-15,237. Purposes of act.
81-15,245. Private Onsite Wastewater Treatment System Advisory Committee; created; members; expenses.
81-15,247. Rules and regulations.
81-15,248. Private onsite wastewater treatment system; professional required; when; registration; inspection and registration; director; powers; waiver of fees authorized.
81-15,248.01. Fee schedule.
81-15,250. Private Onsite Wastewater Treatment System Permit and Approval Cash Fund; created; investment.
81-15,250.01. Private Onsite Wastewater Treatment System Certification and Registration Cash Fund; created; investment.

(a) ENVIRONMENTAL PROTECTION ACT

81-1504.01 Department of Environmental Quality; reports required; contents. The Department of Environmental Quality shall provide the following information to the Governor and to the Clerk of the Legislature by December 1 of each year:

(1) A report by type of service or aid provided by the use and distribution of federal funds received by the department. The report shall also include user fees, permit fees, license fees, and application fees authorized by the federal Environmental Protection Agency as follows:

(a) Actual expenditure of each grant or authorized fees for the most recently completed state fiscal year, including state matching funds;

(b) Current budget and planned use and distribution of each grant and authorized fees for the current state fiscal year, including state matching funds;

(c) A summary of the projected funding level of each grant and authorized fees and the impact of federal mandates and regulations upon the future use of each grant and authorized fees; and

(d) Program summaries including statistical summaries when applicable for the most recently completed state fiscal year and program activity goals for the current state fiscal year;

(2) A summary of regulations of the federal Environmental Protection Agency which the department is required to implement and which do not include federal funding assistance and the possible financial impact to the state and political subdivisions;

(3) A report by type of service or aid provided by the use and distribution of state general and cash funds, including user fees, permit fees, license fees, and application fees, to carry out activities that are not funded by federal grants as follows:

(a) Actual expenditure of state funds, by agency sections, for the most recently completed state fiscal year, including a breakdown of expenditures by personal services, operations, travel, capital outlay, and consulting and contractual services;

(b) Current budget and planned use and distribution of state funds, by agency sections, for the current state fiscal year, including a breakdown of expenditures for personal services, operations, travel, capital outlay, and consulting and contractual services;

(c) A summary of projected program funding needs based upon the statutory requirements and public demand for services and the department's assessment of anticipated needs statewide; and

(d) Program summaries including statistical summaries when applicable for the most recently completed state fiscal year and program activity goals for the current state fiscal year;

(4) A report regarding staff turnover by job class and the department's assessment of its ability to hire and retain qualified staff considering the state's personnel pay plan;

(5) A report listing the method used by each new or existing licensee, permittee, or other person who is required by the department to establish proof of financial responsibility; and

(6) A report for the previous state fiscal year relating to the purpose of the Nebraska Litter Reduction and Recycling Act and of funds credited to the Nebraska Litter Reduction and Recycling Fund.

Source: Laws 1991, LB 528, § 1; Laws 1993, LB 3, § 47; Laws 1993, LB 203, § 1; Laws 1994, LB 1034, § 2; Laws 2003, LB 143, § 9; Laws 2007, LB79, § 1.
Effective date September 1, 2007.

Cross Reference

Nebraska Litter Reduction and Recycling Act, see section 81-1534.

81-1525 Accumulation of junk; failure to remove; violation; penalty. Any property owner or person in lawful possession of property who fails or refuses to remove an accumulation of junk as directed by the director pursuant to section 81-1524 shall be guilty of a Class IV misdemeanor.

Source: Laws 1971, LB 939, § 25; Laws 1972, LB 1435, § 13; Laws 1977, LB 39, § 305; Laws 2007, LB8, § 1.
Effective date September 1, 2007.

(b) LITTER REDUCTION AND RECYCLING ACT

81-1534 Act, how cited. Sections 81-1534 to 81-1566 shall be known and may be cited as the Nebraska Litter Reduction and Recycling Act.

Source: Laws 1979, LB 120, § 1; Laws 1993, LB 203, § 2; Laws 2007, LB568, § 1.
Effective date April 5, 2007.
Termination date October 30, 2010.

81-1553 Repealed. Laws 2007, LB 79, § 3.

81-1553.01 Litter problem; surveys; department; grant funds; progress report. Prior to April 5, 2007, in order to identify the litter problem more fully and to measure the progress made by the department, the department conducted, or granted funds to enable public or private agencies to conduct, a survey measuring the amount and composition of litter on the public highways, recreation lands, and urban areas in the state. The department shall conduct, or grant funds to enable public or private agencies to conduct, followup surveys on a sufficiently regular basis to provide meaningful measurement of the amount and composition of litter and the rate of littering. The results of these surveys shall be reported to the Governor.

Source: Laws 2007, LB568, § 2.
Effective date April 5, 2007.
Termination date October 30, 2010.

(f) LOW-LEVEL RADIOACTIVE WASTE DISPOSAL ACT

81-15,103 Council; financial requirements; adopt rules and regulations; remedial cleanup costs; Radiation Site Closure and Reclamation Fund; Radiation Custodial Care Fund; created; use; investment; agreement with Department of Health and Human Services. (1) For licensed activities involving disposal of low-level radioactive waste, the council shall adopt and promulgate rules and regulations which require a licensee to provide an adequate surety or other financial arrangement sufficient to accomplish any necessary corrective action or cleanup on real or personal property caused by releases of radiation from a disposal site during the operational life and closure period of the facility and to comply with the requirements for decontamination, decommissioning, site closure, and stabilization of sites, and structures and equipment used in conjunction with such licensed activity, in

the event the licensee abandons the facility or defaults for any reason in performing its operational, closure, or other requirements. Such sureties required under the license shall be compatible with applicable federal financial assurance regulations and shall be reviewed by the department at the time of license review under subsection (1) of section 81-15,106. Any arrangement which constitutes self-insurance shall not be allowed. In addition to the surety requirements, the licensee shall purchase property and third-party liability insurance and pay the necessary periodic premiums at all times in such amounts as determined by the council pursuant to rules and regulations adopted and promulgated pursuant to the Low-Level Radioactive Waste Disposal Act.

(2) All sureties required pursuant to subsection (1) of this section which are forfeited shall be paid to the department and remitted to the State Treasurer for credit to the Radiation Site Closure and Reclamation Fund which is hereby created. Any money in the fund may be expended by the department as necessary to complete the requirements on which licensees have defaulted. Money in this fund shall not be used for normal operating expenses of 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.

(3) For licensed activities involving the disposal of low-level radioactive waste, the council shall adopt and promulgate rules and regulations which require a licensee, before termination of the license, to make available such funding arrangements as may be necessary to provide for custodial care.

(4)(a) Remedial cleanup costs which become necessary during the operational life and closure of the facility shall be the responsibility of the licensed facility operator either directly or through applicable surety bonds, insurance, and other financial arrangements required pursuant to subsection (1) of this section, and (b) any remaining remedial cleanup costs which become necessary during the operational life and closure of the facility and which exceed funds available under subdivision (a) of this subsection shall be assessed proportionately by waste volume against the generators, then proportionately by waste volume against the party states as provided by the Central Interstate Low-Level Radioactive Waste Compact.

(5) Remedial cleanup costs which become necessary during the period of custodial care shall be assessed (a) first, against the funds established pursuant to this section and any surety bonds, insurance, or other financial arrangements established for the facility, excluding such funds reserved for custodial care, (b) second, against the licensed facility operator, (c) third, against the generators based on proportionate waste volume, and (d) fourth, against the party states based on proportionate waste volume as provided by the Central Interstate Low-Level Radioactive Waste Compact.

(6) All funds collected from licensees pursuant to subsection (3) of this section and subsection (1) of section 81-15,101 shall be paid to the department and remitted to the State Treasurer for credit to the Radiation Custodial Care Fund which is hereby created. All interest accrued on money deposited in the fund may be expended by the department for the continuing custodial care, maintenance, and other care of facilities from which such funds are collected

as necessary for protection of the public health, safety, and environment. 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.

(7) The department may, by contract, agreement, lease, or license with the Department of Health and Human Services, provide for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site subject to this section as needed to carry out the purposes of this section.

Source: Laws 1986, LB 491, § 26; Laws 1987, LB 426, § 12; Laws 1995, LB 7, § 127; Laws 1996, LB 1044, § 868; Laws 1996, LB 1201, § 9; Laws 2007, LB296, § 757.
Operative date July 1, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.

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

(g) PETROLEUM PRODUCTS AND HAZARDOUS SUBSTANCES STORAGE AND HANDLING

81-15,123 State Fire Marshal; rules and regulations; considerations; requirements. The State Fire Marshal shall adopt and promulgate rules and regulations governing release, detection, prevention, and correction procedures applicable to all owners and operators as shall be necessary to protect human health, public safety, and the environment. Such rules and regulations may distinguish between types, classes, and ages of tanks. In making such distinctions, the State Fire Marshal shall consider, but not be limited to, location of the tanks, soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry-recommended practices, national consensus codes, hydrogeology, depth to the ground water, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tanks, the technical capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the tank is fabricated. Before adoption, such rules and regulations shall be reviewed and approved by the Director of Environmental Quality who shall determine whether the proposed rules and regulations are adequate to protect the environment. Rules and regulations adopted and promulgated pursuant to this section shall include, but not be limited to:

(1) Proper procedures and specifications for the construction, design, installation, replacement, or repair of tanks;

(2) A permit and registration system for all tanks;

(3) A program to establish an inspection system for all tanks. Such program shall provide for periodic safety inspections and spot checks of monitoring systems by the State Fire Marshal. A fee schedule may also be developed for the inspection of new tank and piping installations and tank closures in the manner prescribed in section 81-505.01. Such inspection fees shall be remitted by the State Fire Marshal to the State Treasurer for credit to the Underground Storage Tank Fund. No fee shall be charged for the periodic safety inspections and spot checks of monitoring systems by the State Fire Marshal;

- (4) A monitoring system for all tanks which includes, but is not limited to, the following:
- (a) An inventory-control procedure for any tank used to hold petroleum products or hazardous substances for resale;
 - (b) An inventory-control procedure for any tank used solely for consumptive onsite purposes and not for resale. Such control procedure shall determine the method of inventory measurement giving consideration to the economic burden created by the procedure. The frequency of inventory measurement for such category of tank shall include at least one measurement every thirty days;
 - (c) Provisions for the prompt reporting of any release of a regulated substance; and
 - (d) A procedure for the proper method of monitoring tanks;
- (5) A procedure for notifying the State Fire Marshal of temporarily or permanently abandoned tanks;
- (6) A procedure for removing or making safe any abandoned tanks, except that the State Fire Marshal may dispense with such procedure in special circumstances;
- (7) Financial responsibility requirements, taking into account the financial responsibility requirements established pursuant to 42 U.S.C. 6991b(d);
- (8) Requirements for maintaining a leak-detection system, an inventory-control system, and a tank-testing or comparable system or method designed to identify releases in a manner consistent with the protection of human health, public safety, and the environment;
- (9) Requirements for maintaining records of any monitoring or leak-detection system, inventory-control system, or tank-testing or comparable system;
- (10) Provisions to establish a system for licensing tank installation and removal contractors;
- (11) Provisions to prohibit delivery to, deposit into, or the acceptance of a regulated substance into, an underground storage tank at a facility which has been identified by the State Fire Marshal to be ineligible for such delivery, deposit, or acceptance; and
- (12) Effective August 8, 2009, requirements for training and certification of operators.

Nothing in this section shall be construed to require a subcontractor working under the direction of a licensed installation or removal contractor to be licensed.

Source: Laws 1986, LB 217, § 7; Laws 1989, LB 816, § 3; Laws 1991, LB 409, § 23; Laws 1993, LB 3, § 59; Laws 1993, LB 720, § 1; Laws 2007, LB390, § 1.
Effective date September 1, 2007.

(h) WASTEWATER TREATMENT OPERATOR CERTIFICATION ACT

81-15,130 Council; adopt rules and regulations; contents. In order to carry out the purposes of the Wastewater Treatment Operator Certification Act, the council shall adopt and promulgate rules and regulations. Such rules and regulations shall include, but not be limited to:

- (1) Establishing and carrying out procedures for the certification program provided for in the act;
- (2) Classification of wastewater treatment facilities. Such classification shall be based on the size and type of wastewater treatment facility, the quality and quantity of wastewater to be treated, and other physical, chemical, and biological conditions affecting such treatment

facilities and according to the skill, knowledge, and experience that the operator must have to supervise successfully the operation of the facilities so as to protect the public health and to protect the waters of the state;

(3) A procedure to be carried out by the department to receive applications and examine the qualifications of applicants for certification;

(4) Development of a training and continuing educational program including regular training schools, short courses, conferences, and programs. The council shall adopt procedures and minimum requirements for the approval of correspondence courses, required classroom instruction, and minimum attendance standards to maintain certification;

(5) Requirements for the maintenance of records of the classification of wastewater treatment facilities;

(6) Distribution of applications and notices of examinations;

(7) Procedures in the department for preparing, conducting, and grading examinations either by the department or by its representatives or persons conducting approved training schools, short courses, conferences, and programs, including correspondence courses;

(8) A fee schedule to be implemented by the department which shall include a fee designed to cover direct and indirect costs associated with applicant's certification but not to exceed three hundred dollars per application. Fees may also be charged by the department for each educational program to be paid by the participant. Such fee shall be an amount necessary to cover program costs;

(9) Procedures and requirements to allow the director to issue temporary certificates as provided in section 81-15,135; and

(10) Provisions for granting exemptions to operators of individual septic tank systems, nondischarging lagoon systems, and other disposal systems as determined by the council.

Source: Laws 1987, LB 533, § 3; Laws 2007, LB161, § 1.
Effective date September 1, 2007.

(I) WASTE REDUCTION AND RECYCLING

81-15,160 Waste Reduction and Recycling Incentive Fund; created; use; investment; grants; restrictions. (1) The Waste Reduction and Recycling Incentive Fund is created. The department shall deduct from the fund amounts sufficient to reimburse itself for its costs of administration of the fund. The fund shall be administered by the Department of Environmental Quality. The fund shall consist of proceeds from the fees imposed pursuant to the Waste Reduction and Recycling Incentive Act.

(2) The fund may be used for purposes which include, but are not limited to:

(a) Technical and financial assistance to political subdivisions for creation of recycling systems and for modification of present recycling systems;

(b) Recycling and waste reduction projects, including public education, planning, and technical assistance;

(c) Market development for recyclable materials separated by generators, including public education, planning, and technical assistance;

(d) Capital assistance for establishing private and public intermediate processing facilities for recyclable materials and facilities using recyclable materials in new products;

(e) Programs which develop and implement composting of yard waste and composting with sewage sludge;

(f) Technical assistance for waste reduction and waste exchange for waste generators;

(g) Programs to assist communities and counties to develop and implement household hazardous waste management programs; and

(h) Capital assistance for establishing private and public facilities to manufacture combustible waste products and to incinerate combustible waste to generate and recover energy resources, except that no disbursements shall be made under this section for scrap tire processing related to tire-derived fuel.

The State Treasurer shall transfer two million one hundred thousand dollars from the Waste Reduction and Recycling Incentive Fund to the General Fund within five days after August 16, 2002.

(3) Grants up to one million dollars annually shall be available until June 30, 2009, for new scrap tire projects only, if acceptable scrap tire project applications are received. Eligible categories of disbursement under section 81-15,161 may include, but are not limited to:

(a) Reimbursement for the purchase of crumb rubber generated and used in Nebraska, with disbursements not to exceed fifty percent of the cost of the crumb rubber;

(b) Reimbursement for the purchase of tire-derived product which utilizes a minimum of twenty-five percent recycled tire content, with disbursements not to exceed twenty-five percent of the product's retail cost, except that persons who applied for a grant between June 1, 1999, and May 31, 2001, for the purchase of tire-derived product which utilizes a minimum of twenty-five percent recycled tire content may apply for reimbursement on or before July 1, 2002. Reimbursement shall not exceed twenty-five percent of the product's retail cost and may be funded in fiscal years 2001-02 and 2002-03;

(c) Participation in the capital costs of building, equipment, and other capital improvement needs or startup costs for scrap tire processing or manufacturing of tire-derived product, with disbursements not to exceed fifty percent of such costs or five hundred thousand dollars, whichever is less;

(d) Participation in the capital costs of building, equipment, or other startup costs needed to establish collection sites or to collect and transport scrap tires, with disbursements not to exceed fifty percent of such costs;

(e) Cost-sharing for the manufacturing of tire-derived product, with disbursements not to exceed twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually;

(f) Cost-sharing for the processing of scrap tires, with disbursements not to exceed twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually;

(g) Cost-sharing for the use of scrap tires for civil engineering applications for specified projects, with disbursements not to exceed twenty dollars per ton or two hundred fifty thousand dollars, whichever is less, to any person annually; and

(h) Disbursement to a political subdivision up to one hundred percent of costs incurred in cleaning up scrap tire collection and disposal sites.

The director shall give preference to projects which utilize scrap tires generated and used in Nebraska.

(4) Priority for grants made under section 81-15,161 shall be given to grant proposals demonstrating a formal public/private partnership except for grants awarded from fees collected under subsection (6) of section 13-2042.

(5) Grants awarded from fees collected under subsection (6) of section 13-2042 may be renewed for up to a five-year grant period. Such applications shall include an updated integrated solid waste management plan pursuant to section 13-2032. Annual disbursements are subject to available funds and the grantee meeting established grant conditions. Priority for such grants shall be given to grant proposals showing regional participation and programs which address the first integrated solid waste management hierarchy as stated in section 13-2018 which shall include toxicity reduction. Disbursements for any one year shall not exceed fifty percent of the total fees collected after rebates under subsection (6) of section 13-2042 during that year.

(6) Any person who stores waste tires in violation of section 13-2033, which storage is the subject of abatement or cleanup, shall be liable to the State of Nebraska for the reimbursement of expenses of such abatement or cleanup paid by the Department of Environmental Quality.

(7) The Department of Environmental Quality may receive gifts, bequests, and any other contributions for deposit in the Waste Reduction and Recycling Incentive Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1990, LB 163, § 2; Laws 1992, LB 1257, § 95; Laws 1993, LB 203, § 20; Laws 1993, LB 444, § 1; Laws 1994, LB 1034, § 7; Laws 1994, LB 1066, § 122; Laws 1997, LB 495, § 9; Laws 1999, LB 592, § 3; Laws 2001, LB 461, § 16; Laws 2002, Second Spec. Sess., LB 1, § 7; Laws 2003, LB 143, § 11; Laws 2007, LB568, § 3.
Effective date April 5, 2007.

Cross Reference

Nebraska Capital Expansion Act, see section 72-1269.

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

(n) NEBRASKA ENVIRONMENTAL TRUST ACT

81-15,170 Nebraska Environmental Trust Board; created; membership; qualifications; executive director. The Nebraska Environmental Trust Board is hereby created as an entity of the executive branch. The board shall consist of the Director of Environmental Quality, the Director of Natural Resources, the Director of Agriculture, the secretary of the Game and Parks Commission, the chief executive officer of the Department

of Health and Human Services or his or her designee, and nine citizens appointed by the Governor with the approval of a majority of the Legislature. The citizen members shall begin serving immediately following notice of nomination and prior to approval by the Legislature. The citizen members shall represent the general public and shall have demonstrated competence, experience, and interest in the environment of the state. Two of the citizen appointees shall also have experience with private financing of public-purpose projects. Three appointees shall be chosen from each of the three congressional districts. The board shall hire an executive director who shall hire and supervise other staff members as may be authorized by the board. The executive director shall serve at the pleasure of the board and be solely responsible to it. The Game and Parks Commission shall provide administrative support, including, but not limited to, payroll and accounting functions, to the board.

Source: Laws 1992, LB 1257, § 47; Laws 1993, LB 138, § 79; Laws 1996, LB 1044, § 869; Laws 2000, LB 900, § 248; Laws 2002, LB 1003, § 49; Laws 2007, LB296, § 758.
Operative date July 1, 2007.

(r) TECHNICAL ADVISORY COMMITTEE

81-15,189 Technical advisory committee; members; qualifications; expenses. In order to implement the Petroleum Products and Hazardous Substances Storage and Handling Act and the Petroleum Release Remedial Action Act, the Director of Environmental Quality shall appoint a technical advisory committee to work with the Department of Environmental Quality. The duties of the committee are advisory only. Committee members shall include, but not be limited to:

- (1) The Director of Environmental Quality or his or her designee;
- (2) The State Fire Marshal or his or her designee;
- (3) The executive director of the Nebraska Petroleum Marketers and Convenience Store Association or his or her designee;
- (4) The executive director of the League of Nebraska Municipalities or his or her designee;
- (5) The executive director of the Nebraska Association of County Officials or his or her designee;
- (6) The executive director of the Nebraska Petroleum Council or his or her designee;
- (7) The executive director of the American Consulting Engineers Council of Nebraska or his or her designee;
- (8) The executive director of the Nebraska Chamber of Commerce and Industry or his or her designee;
- (9) The executive director of the Associated Builders and Contractors or his or her designee;
- (10) The executive director of the Nebraska Cooperative Council or his or her designee;
- (11) A representative of the Department of Health and Human Services; and
- (12) A member of the public representing environmental interests.

Committee members shall be reimbursed for actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1996, LB 1226, § 19; Laws 1998, LB 1161, § 47; Laws 2007, LB296, § 759.
Operative date July 1, 2007.

Cross Reference

Petroleum Products and Hazardous Substances Storage and Handling Act, see section 81-15,117.
Petroleum Release Remedial Action Act, see section 66-1501.

(s) NEBRASKA EMERGENCY PLANNING
AND COMMUNITY RIGHT TO KNOW ACT

81-15,210 State Administrator; State Emergency Response Commission; created; members; terms. (1) The director of the Nebraska Emergency Management Agency shall serve as the State Administrator of the Nebraska Emergency Planning and Community Right to Know Act. The State Emergency Response Commission is created and shall be a part of the Nebraska Emergency Management Agency for administrative purposes. The membership of the commission shall include the Director of Environmental Quality or his or her designee, the Director-State Engineer or his or her designee, the Superintendent of Law Enforcement and Public Safety or his or her designee, the State Fire Marshal or his or her designee, the director of the Nebraska Emergency Management Agency or his or her designee, the chief executive officer of the Department of Health and Human Services or his or her designee, two elected officials or employees of municipal or county government, and one citizen member to represent each of the following interest groups: Firefighters, local emergency management, public or community health, environmental protection, labor, school district, small business, agricultural business, chemical industry, highway transportation, and rail transportation. The Governor shall appoint the municipal or county government officials or employees and the citizen members with the approval of the Legislature. The appointments shall be made to represent the three congressional districts as equally as possible.

(2) The members appointed by the Governor shall be appointed for terms of four years, except that of the first citizen members appointed, three members shall serve for one-year terms, three members shall serve for two-year terms, and two members shall serve for three-year terms, as designated at the time of appointment.

(3) A vacancy on the commission shall exist in the event of the death, disability, or resignation of a member. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed by the Governor for the remainder of such term.

Source: Laws 1997, LB 374, § 20; Laws 2007, LB296, § 760.
Operative date July 1, 2007.

(t) PRIVATE ONSITE WASTEWATER TREATMENT SYSTEM
CONTRACTORS CERTIFICATION AND SYSTEM REGISTRATION ACT

81-15,236 Act, how cited. Sections 81-15,236 to 81-15,253 shall be known and may be cited as the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act.

Source: Laws 2003, LB 94, § 1; Laws 2007, LB333, § 1.
Effective date March 8, 2007.

81-15,237 Purposes of act. The purposes of the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act are to:

- (1) Protect the air, water, and land of the state through the certification and regulation of private onsite wastewater treatment system professionals in Nebraska;
- (2) Require certified professionals for siting, layout, construction, closure, reconstruction, alteration, modification, repair, inspection, and pumping of private onsite wastewater treatment systems and require that all siting, layout, construction, closure, reconstruction, alteration, modification, repair, inspection, or pumping of any private onsite wastewater treatment system be done by certified professionals in accordance with the act and rules and regulations adopted under the act;
- (3) Provide for the registration of all private onsite wastewater treatment systems constructed, reconstructed, altered, or modified after August 31, 2003;
- (4) Provide for review of plans and specifications, issuance of permits and approvals, construction standards, and requirements necessary for proper operation and maintenance of all private onsite wastewater treatment systems;
- (5) Protect the health and general welfare of the citizens of Nebraska; and
- (6) Protect the air, water, and land of the state from potential pollution by providing for proper siting, layout, construction, closure, reconstruction, alteration, modification, repair, and pumping of private onsite wastewater treatment systems.

Source: Laws 2003, LB 94, § 2; Laws 2007, LB333, § 2.
Effective date March 8, 2007.

81-15,245 Private Onsite Wastewater Treatment System Advisory Committee; created; members; expenses. The Private Onsite Wastewater Treatment System Advisory Committee is created. The advisory committee shall be composed of the following eleven members:

- (1) Seven members appointed by the director as follows:
 - (a) Five private onsite wastewater treatment system professionals; and
 - (b) Two registered environmental health specialists or officials representing local public health departments which have established programs for regulating private onsite wastewater treatment systems;
- (2) The chief executive officer of the Department of Health and Human Services or his or her designee;
- (3) The Director of Environmental Quality or his or her designated representative; and
- (4) One representative with experience in soils and geology and one representative with experience in biological engineering, both of whom shall be designated by the vice chancellor of the University of Nebraska Institute of Agriculture and Natural Resources.

Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The department shall provide administrative support for the advisory committee.

Source: Laws 2003, LB 94, § 10; Laws 2007, LB296, § 761.
Operative date July 1, 2007.

81-15,247 Rules and regulations. The council shall adopt and promulgate rules and regulations to carry out the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act. Such rules and regulations shall provide for, but not be limited to:

- (1) Certification of private onsite wastewater treatment system professionals;
- (2) Establishing categories for such professionals to be certified under the act;
- (3) Hardship certifications;
- (4) Examination requirements for certification;
- (5) Continuing education requirements for certification;

(6) A fee schedule which covers direct and indirect costs to administer the act. Such costs include (a) system registration, late fees for system registration, application for certification, examination, and renewal, late fees for renewal, hardship certifications, fees for continuing education classes offered or approved by the department, and administration and enforcement and (b) development and enforcement of standards;

(7) Requirements for the registration of private onsite wastewater treatment systems to be constructed, reconstructed, altered, modified, or inspected by professionals certified under the act; and

(8) Requiring that all private onsite wastewater treatment system siting, layout, construction, closure, reconstruction, alteration, modification, repair, inspection, or pumping be performed by certified professionals in accordance with the act, rules and regulations adopted under the act, and other rules and regulations adopted and promulgated by the council.

Source: Laws 2003, LB 94, § 12; Laws 2007, LB333, § 3.
Effective date March 8, 2007.

81-15,248 Private onsite wastewater treatment system; professional required; when; registration; inspection and registration; director; powers; waiver of fees authorized. (1) A private onsite wastewater treatment system shall not be sited, laid out, constructed, closed, reconstructed, altered, modified, repaired, inspected, or pumped unless the siting, layout, construction, closure, reconstruction, alteration, modification, repair, inspection, or pumping is carried out or supervised by either a certified professional as required by the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act, a professional engineer licensed in Nebraska, or a registered environmental health specialist registered in Nebraska.

(2) Any private onsite wastewater treatment system constructed, reconstructed, altered, or modified by a certified professional, professional engineer licensed in Nebraska, or registered environmental health specialist registered in Nebraska shall be registered with the department by the certified professional, professional engineer, or registered environmental health specialist within forty-five days of completion of the construction, reconstruction, alteration,

or modification. The certified professional, professional engineer, or registered environmental health specialist shall submit the registration on forms provided by the department and shall include the registration fee. The registration fee shall be fifty dollars until rules and regulations adopted and promulgated under the act provide a schedule of system registration fees adequate to cover direct and indirect program costs.

(3) The director by contract may delegate onsite wastewater treatment system inspection and registration to a governmental subdivision which has adopted a program at least as stringent as the requirements provided by the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act and which has demonstrated authority to administer and enforce its onsite wastewater treatment system inspection and registration program.

(4) The director may waive certification and examination fees for inspectors employed by a governmental agency or subdivision which has adopted and has the authority to enforce an inspection and compliance program at least as stringent as the standards for siting, layout, construction, closure, reconstruction, alteration, modification, repair, inspection, and pumping provided by the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act and rules and regulations under the act adopted and promulgated by the council.

Source: Laws 2003, LB 94, § 13; Laws 2004, LB 449, § 14; Laws 2007, LB333, § 4.
Effective date March 8, 2007.

81-15,248.01 Fee schedule. The council shall adopt and promulgate rules and regulations to develop a fee schedule which covers direct and indirect costs to administer requirements related to private onsite wastewater treatment systems authorized by the Environmental Protection Act. Such costs include costs related to review of submitted plans and specifications, issuance of permits and approvals, proper operation and maintenance, development and enforcement of standards, closure, and necessary administration and enforcement.

Source: Laws 2007, LB333, § 5.
Effective date March 8, 2007.

Cross Reference

Environmental Protection Act, see section 81-1532.

81-15,250 Private Onsite Wastewater Treatment System Permit and Approval Cash Fund; created; investment. The Private Onsite Wastewater Treatment System Permit and Approval Cash Fund is created. Fees collected pursuant to section 81-15,248.01 shall be remitted to the State Treasurer for credit to the fund. 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.

Any money remaining in the Private Onsite Wastewater Treatment System Cash Fund on March 8, 2007, shall be transferred to the Private Onsite Wastewater Treatment System Certification and Registration Cash Fund created under section 81-15,250.01 on such date.

Source: Laws 2003, LB 94, § 15; Laws 2007, LB333, § 6.
Effective date March 8, 2007.

Cross Reference

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

81-15,250.01 Private Onsite Wastewater Treatment System Certification and Registration Cash Fund; created; investment. The Private Onsite Wastewater Treatment System Certification and Registration Cash Fund is created. Fees collected pursuant to sections 81-15,247 and 81-15,248 shall be remitted to the State Treasurer for credit to the fund. 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.

Source: Laws 2007, LB333, § 7.
Effective date March 8, 2007.

Cross Reference

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

ARTICLE 20

NEBRASKA STATE PATROL

(a) GENERAL PROVISIONS

Section.

- 81-2004.01. Carrier Enforcement Cash Fund; created; use; investment.
- 81-2004.06. Capitol Security Revolving Fund; created; use; investment.
- 81-2004.08. Nebraska Public Safety Communication System Cash Fund; created; use; investment.

(b) RETIREMENT SYSTEM

- 81-2014. Terms, defined.
- 81-2014.01. Act, how cited.
- 81-2017. Retirement system; contributions; payment; funding of system.
- 81-2041. DROP participation authorized; requirements; fees.

(a) GENERAL PROVISIONS

81-2004.01 Carrier Enforcement Cash Fund; created; use; investment. The Carrier Enforcement Cash Fund is created. The fund shall be established within the Nebraska

State Patrol and administered by the Superintendent of Law Enforcement and Public Safety. The fund shall consist of fund transfers made each fiscal year from the Roads Operations Cash Fund as authorized by the Legislature through the budget process. The Carrier Enforcement Cash Fund shall only be used to pay the costs associated with the operation of the carrier enforcement division of the patrol, except that the Legislature may authorize fund transfers each fiscal year through the budget process from the Carrier Enforcement Cash Fund to the Nebraska Public Safety Communication System Cash Fund to pay the carrier enforcement division's share of operations costs of the Nebraska Public Safety Communication System. Any money in the Carrier Enforcement 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 2007, LB322, § 2.
Operative date July 1, 2007.

Cross Reference

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

81-2004.06 Capitol Security Revolving Fund; created; use; investment. The Capitol Security Revolving Fund is created. The fund shall be established within the Nebraska State Patrol and administered by the Superintendent of Law Enforcement and Public Safety. The fund shall consist of fund transfers made each fiscal year from the State Building Revolving Fund, as authorized by the Legislature through the budget process, and any other revenue received by the state capitol security division of the patrol from separate security agreements with state agencies. The Capitol Security Revolving Fund shall only be used to pay the non-general-fund costs associated with the operation of the state capitol security division. Any money in the Capitol Security Revolving Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2007, LB322, § 3.
Operative date July 1, 2007.

Cross Reference

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

81-2004.08 Nebraska Public Safety Communication System Cash Fund; created; use; investment. The Nebraska Public Safety Communication System Cash Fund is created. The fund shall be established within the Nebraska State Patrol and administered by the Superintendent of Law Enforcement and Public Safety. The fund shall consist of all revenue credited pursuant to law, including any fund transfers authorized by the Legislature. The fund shall only be used to pay the patrol's direct costs related to administering, operating, and maintaining the Nebraska Public Safety Communication System, except that any unobligated money in the fund may first be used to reduce the patrol's General Fund costs to operate the

Nebraska Public Safety Communication System, and if additional unobligated money in the fund exists, the Legislature may transfer money from the fund to the State Fire Marshal and the Game and Parks Commission to reduce the General Fund costs to operate the Nebraska Public Safety Communication System. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2007, LB322, § 4.
Operative date July 1, 2007.

Cross Reference

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

(b) RETIREMENT SYSTEM

81-2014 Terms, defined. For purposes of the Nebraska State Patrol Retirement Act:

(1) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of payment or to be received at an earlier retirement age than the normal retirement age. The determinations shall be based on the 1994 Group Annuity Mortality Table reflecting sex-distinct factors blended using seventy-five percent of the male table and twenty-five percent of the female table. An interest rate of eight percent per annum shall be reflected in making the determinations until such percent is amended by the Legislature;

(2) Board means the Public Employees Retirement Board;

(3)(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, 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. For any officer employed after January 4, 1979, compensation does not include compensation for unused sick leave or unused vacation leave converted to cash payments. Compensation includes overtime pay, member retirement contributions, and amounts contributed by the member to plans under sections 125 and 457 of the Internal Revenue Code as defined in section 49-801.01 or any other section of the code which defers or excludes such amounts from income.

(b) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as defined in section 49-801.01 shall be disregarded. For an employee who was a member of the retirement system before the first plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993;

(4) Creditable service means service granted pursuant to section 81-2034 and all service rendered while a contributing member of the retirement system. Creditable service includes

working days, sick days, vacation days, holidays, and any other leave days for which the officer is paid regular wages. Creditable service does not include eligibility and vesting credit nor service years for which member contributions are withdrawn and not repaid;

(5) Current benefit means (a) until July 1, 2000, the initial benefit increased by all adjustments made pursuant to section 81-2027.04 and (b) on or after July 1, 2000, the initial benefit increased by all adjustments made pursuant to the Nebraska State Patrol Retirement Act;

(6) DROP means the deferred retirement option plan as provided in section 81-2041;

(7) DROP period means the amount of time the member elects to participate in DROP which shall be for a period not to exceed five years from and after the date of the member's DROP election;

(8) Eligibility and vesting credit means credit for years, or a fraction of a year, of participation in a Nebraska government plan for purposes of determining eligibility for benefits under the Nebraska State Patrol Retirement Act. Such credit shall be used toward the vesting percentage pursuant to subsection (2) of section 81-2031 but shall not be included as years of service in the benefit calculation;

(9) Initial benefit means the retirement benefit calculated at the time of retirement;

(10) Officer means an officer provided for in sections 81-2001 to 81-2009;

(11) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(12) Regular interest means interest fixed at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on July 1 of each year, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

(13) Retirement system or system means the Nebraska State Patrol Retirement System as provided in the act;

(14) Service means employment as a member of the Nebraska State Patrol and shall not be 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 board. Service does not include any period of disability for which disability retirement benefits are received under subsection (1) of section 81-2025;

(15) Surviving spouse means (a) the spouse married to the member on the date of the member's death if married for at least one year prior to death or if married on the date of the member's retirement 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; and

(16) Termination of employment occurs on the date on which the Nebraska State Patrol determines that the officer's employer-employee relationship with the patrol is dissolved. The Nebraska State Patrol shall notify the board of the date on which such a termination has occurred. Termination of employment does not include ceasing employment with the Nebraska State Patrol if the officer returns to regular employment with the Nebraska State Patrol or another agency of the State of Nebraska and there are less than one hundred twenty days between the date when the employee's employer-employee relationship ceased and the date when the employer-employee relationship commenced with the Nebraska State Patrol or another state agency.

Source: Laws 1947, c. 211, § 1, p. 687; Laws 1969, c. 511, § 1, p. 2092; R.S.1943, (1978), § 60-441; Laws 1989, LB 506, § 13; Laws 1991, LB 549, § 47; Laws 1994, LB 833, § 34; Laws 1995, LB 501, § 7; Laws 1996, LB 700, § 13; Laws 1996, LB 847, § 34; Laws 1996, LB 1076, § 32; Laws 1996, LB 1273, § 27; Laws 1997, LB 624, § 27; Laws 1999, LB 674, § 7; Laws 2000, LB 1192, § 19; Laws 2001, LB 408, § 19; Laws 2002, LB 470, § 7; Laws 2003, LB 451, § 21; Laws 2007, LB324, § 1. Effective date May 31, 2007.

Cross Reference

Spousal Pension Rights Act, see section 42-1101.

81-2014.01 Act, how cited. Sections 81-2014 to 81-2041 shall be known and may be cited as the Nebraska State Patrol Retirement Act.

Source: Laws 1996, LB 847, § 33; Laws 1997, LB 624, § 28; Laws 1998, LB 532, § 9; Laws 1998, LB 1191, § 64; Laws 2001, LB 408, § 20; Laws 2002, LB 407, § 48; Laws 2007, LB324, § 2. Effective date May 31, 2007.

81-2017 Retirement system; contributions; payment; funding of system. (1) Commencing July 1, 2005, each officer while in the service of the Nebraska State Patrol shall pay or have paid on his or her behalf a sum equal to thirteen percent of his or her monthly compensation. Such amounts shall be deducted monthly by the Director of Administrative Services who shall draw a warrant monthly in the amount of the total deductions from the compensation of members of the Nebraska State Patrol in accordance with subsection (4) of this section, and the State Treasurer shall credit the amount of such warrant to the State Patrol Retirement Fund. The director shall cause a detailed report of all monthly deductions to be made each month to the board.

(2) In addition, commencing July 1, 2005, there shall be assessed against the appropriation of the Nebraska State Patrol a sum equal to the amount of fifteen percent of each officer's monthly compensation which shall be credited to the State Patrol Retirement Fund.

(3) For the fiscal year beginning on July 1, 2002, and each fiscal year thereafter, the actuary for the board shall perform an actuarial valuation of the system using the entry age actuarial cost method. Under this method, the actuarially required funding rate is equal to the normal cost rate, plus the contribution rate necessary to amortize the unfunded actuarial accrued

liability on a level 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. Beginning July 1, 2006, any existing unfunded liabilities shall be reinitialized and amortized over a thirty-year period, and during each subsequent actuarial valuation, changes in the funded actuarial accrued liability due to changes in benefits, actuarial assumptions, the asset valuation method, or actuarial gains or losses shall be measured and amortized over a thirty-year period beginning on the valuation date of such change. If the unfunded actuarial accrued liability under the entry age actuarial cost method is zero or less than zero on an actuarial valuation date, then all prior unfunded actuarial accrued liabilities shall be considered fully funded and the unfunded actuarial accrued liability shall be reinitialized and amortized over a thirty-year period as of the actuarial valuation date. If the actuarially required contribution rate exceeds the rate of all contributions required pursuant to the Nebraska State Patrol Retirement Act, there shall be a supplemental appropriation sufficient to pay for the differences between the actuarially required contribution rate and the rate of all contributions required pursuant to the Nebraska State Patrol Retirement Act. Such valuation shall be on the basis of actuarial assumptions recommended by the actuary, approved by the board, and kept on file with the board.

(4) The state shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code as defined in section 49-801.01, except that the state 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 code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The state shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The state shall pick up these contributions by a compensation deduction through a reduction in the cash compensation of the member. Member contributions picked up shall be treated for all purposes of the Nebraska State Patrol Retirement Act in the same manner and to the extent as member contributions made prior to the date picked up.

Source: Laws 1947, c. 211, § 4, p. 688; Laws 1959, c. 286, § 6, p. 1085; Laws 1965, c. 387, § 1, p. 1243; Laws 1971, LB 987, § 10; Laws 1975, LB 235, § 1; R.S.1943, (1978), § 60-444; Laws 1981, LB 462, § 5; Laws 1984, LB 218, § 4; Laws 1989, LB 506, § 14; Laws 1991, LB 549, § 49; Laws 1994, LB 833, § 36; Laws 1994, LB 1287, § 1; Laws 1995, LB 369, § 6; Laws 1995, LB 574, § 81; Laws 2001, LB 408, § 21; Laws 2002, LB 407, § 50; Laws 2004, LB 514, § 1; Laws 2005, LB 503, § 12; Laws 2006, LB 1019, § 12; Laws 2007, LB324, § 4.
Effective date May 31, 2007.

81-2041 DROP participation authorized; requirements; fees. (1) Any member who meets the participation requirements of subsection (2) of this section may participate in DROP. DROP provides that subsequent to attaining normal age and service retirement eligibility, a member may voluntarily choose to participate in DROP upon its adoption which, for purposes of this section, shall be the earlier of September 1, 2008, or the first of the month

following a favorable letter determination by the Internal Revenue Service. If the member chooses to participate in DROP, the member shall be deemed to have retired, but the member may continue in active employment for up to a five-year period. During the DROP period, the member's retirement benefit payments shall be deposited into the DROP account for the benefit of the member until the member actually retires from active employment at or before the expiration of the DROP period. Thereafter, future retirement benefit payments shall be made directly to the member, and the member shall have access to all funds in the DROP account designated for the benefit of the member.

(2) To participate in the DROP program, a member shall meet the following requirements:

(a) A member shall be eligible to enter DROP at any time subsequent to the date when the member has (i) attained normal retirement age and (ii) completed twenty-five years of service. Members having attained normal retirement age and completed twenty-five years of service on or before the date of adoption of DROP shall be eligible to enter DROP at any future date;

(b) A member who elects to enter DROP shall be entitled to receive regular age and service retirement benefits in accordance with section 81-2026. A member is entitled to remain in DROP for a maximum of five years subsequent to the date of the member's DROP election. A member may separate from service and thereby exit DROP at any time during the DROP period. On or before the completion of the DROP period, the member must separate from active employment and exit DROP. During the DROP period, a member's retirement benefit shall be payable to the DROP account vendor designated in the member's name. Amounts transferred or paid to a participating member's DROP account shall not constitute annual additions under section 415 of the Internal Revenue Code;

(c) A member electing to enter DROP shall choose an annuity payment option. After the option is chosen, the member shall not be entitled to any retirement benefit changes, for reasons including, but not limited to, wage increases, promotions, and demotions, except that the restriction on retirement benefit changes shall not apply in the event of duty-related death or duty-related disability. The benefit amount shall be fixed as of the date of election and shall be payable as if the employee retired on that date and separated from active employment. Upon the death of a member during the DROP period, monthly benefits shall be provided as a percentage of the amount of the member's annuity as set forth in subsection (3) of section 81-2026 based upon the annuity benefit calculation made at commencement of the DROP period. In addition, the balance of the DROP account, if any, shall be provided to the beneficiary or beneficiaries of the member or, if no beneficiary is provided, to the estate of the member. Upon the disability of a member during the DROP period, the member shall be deemed to have completed the DROP period, shall begin receiving the annuity benefit as calculated at the commencement of the DROP period, and shall be paid the balance of the DROP account, if any;

(d) No member shall be allowed to continue making the required contributions while the member is enrolled in DROP;

(e) During the DROP period, the Nebraska State Patrol shall not be assessed the amount required under subsection (2) of section 81-2017 nor shall such amount be credited to the State Patrol Retirement Fund;

(f) The member shall be paid the balance of the DROP account upon the member's separation from active employment or at the expiration of the DROP period thereby ending the member's participation in DROP. If a member has not voluntarily separated from active employment on or before the completion of the DROP period, the member's retirement benefit shall be paid directly to the member thereby ending the member's active employment. The member's DROP account shall consist of accrued retirement benefits and interest on such benefits;

(g) Any member that is enrolled in DROP shall be responsible for directing the DROP account designated for the benefit of the member by investing the account in any DROP investment options. There shall be no guaranteed rate of investment return on DROP account assets. Any losses, charges, or expenses incurred by the participating DROP member in such member's DROP account by virtue of the investment options selected by the participating DROP member shall not be made up by the retirement system but all of the same shall be born by the participating DROP member. The retirement system, the state, the board, and the state investment officer shall not be responsible for any investment results under the DROP agreement. Transfers between investment options shall be in accordance with the rules and regulations of DROP. A DROP account shall be established for each participating DROP member. Such DROP account shall be adjusted no less frequently than annually for the member's retirement benefit distributions and net investment earnings and losses;

(h) If the DROP account is subject to administrative or other fees or charges, such fees or charges shall be charged to the participating DROP member's DROP account; and

(i) Cost-of-living adjustments as provided for in section 81-2027.03 shall not be applied to retirement benefits during the DROP period.

Source: Laws 2007, LB324, § 3.
Effective date May 31, 2007.

ARTICLE 21

STATE ELECTRICAL DIVISION

Section.

81-2121. Act; not applicable to certain situations; enumerated.

81-2121 Act; not applicable to certain situations; enumerated. Nothing in the State Electrical Act shall be construed to:

(1) Require employees of municipal corporations, public power districts, public power and irrigation districts, electric membership or cooperative associations, public utility corporations, railroads, telephone or telegraph companies, or commercial or industrial companies performing manufacturing, installation, and repair work for such employer to hold licenses while acting within the scope of their employment;

(2) Require any person doing work for which a license would otherwise be required under the act to hold a license issued under the act if he or she is the holder of a valid license issued by any city or other political subdivision, so long as he or she makes electrical installations only in the jurisdictional limits of such city or political subdivision and such license issued by the city or political subdivision meets the requirements of the act;

(3) Cover the installation, maintenance, repair, or alteration of vertical transportation or passenger conveyors, elevators, moving walks, dumbwaiters, stagelifts, manlifts, or appurtenances thereto beyond the terminals of the controllers. The licensing of elevator contractors or constructors shall not be considered a part of the licensing requirements of the act;

(4) Require a license of any person who engages any electrical appliance where approved electrical outlets are already installed;

(5) Prohibit an owner of property from performing work on his or her principal residence, if such residence is not larger than a single-family dwelling, or farm property, excluding commercial or industrial installations or installations in public-use buildings or facilities, or require such owner to be licensed under the act;

(6) Require that any person be a member of a labor union in order to be licensed; or

(7) Prohibit a pump installation contractor or pump installation supervisor credentialed under the Water Well Standards and Contractors' Practice Act from wiring pumps and pumping equipment at a water well location to the first control.

Source: Laws 1975, LB 525, § 22; Laws 1978, LB 833, § 9; Laws 1981, LB 67, § 3; R.S.Supp., 1981, § 81-592; Laws 1986, LB 379, § 2; Laws 1993, LB 193, § 20; Laws 2004, LB 914, § 6; Laws 2006, LB 508, § 11; Laws 2007, LB463, § 1314.
Operative date December 1, 2008.

Cross Reference

Water Well Standards and Contractors' Practice Act, see section 46-1201.

ARTICLE 22

AGING SERVICES

(a) NEBRASKA COMMUNITY AGING SERVICES ACT

Section.

81-2205. Committee, defined.

81-2206. Department, defined.

81-2207. Repealed. Laws 2007, LB 296, § 815.

81-2213. Department; powers and duties relating to aging.

81-2226. Area agency on aging; malfeasance; effect.

(b) CARE MANAGEMENT SERVICES

81-2229. Legislative intent.

(c) LONG-TERM CARE OMBUDSMAN

- 81-2241. Repealed. Laws 2007, LB 296, § 815.
- 81-2248. State long-term care ombudsman, defined.
- 81-2249. Office; created; state long-term care ombudsman; appointed.
- 81-2250. Long-term care ombudsman program; established; contents.
- 81-2251. Rules and regulations; state long-term care ombudsman; qualifications.
- 81-2252. Local long-term care ombudsman programs; designation; provisional status.
- 81-2255. Abuse, neglect, or exploitation; referral required; procedure.
- 81-2260. Complaints or investigations; confidentiality; exceptions.

(d) PREADMISSION SCREENING

- 81-2265. Legislative intent.
- 81-2267. Evaluation of pilot project.
- 81-2268. Medicaid waiver funds; use authorized.

(a) NEBRASKA COMMUNITY AGING SERVICES ACT

81-2205 Committee, defined. Committee shall mean the Division of Medicaid and Long-Term Care Advisory Committee on Aging.

Source: Laws 1982, LB 404, § 5; Laws 1996, LB 1044, § 870; Laws 2007, LB296, § 762.
Operative date July 1, 2007.

Cross Reference

Division of Medicaid and Long-Term Care Advisory Committee on Aging, created, see section 68-1101.

81-2206 Department, defined. Department shall mean the Division of Medicaid and Long-Term Care of the Department of Health and Human Services.

Source: Laws 1982, LB 404, § 6; Laws 1996, LB 1044, § 871; Laws 2007, LB296, § 763.
Operative date July 1, 2007.

81-2207 Repealed. Laws 2007, LB 296, § 815.

81-2213 Department; powers and duties relating to aging. The department shall have the following powers and duties:

(1) To develop, approve, and submit to the Governor a two-year, three-year, or four-year state plan on aging, as determined by the department, for purposes of administering grant funds allocated to the state under the federal Older Americans Act, as now or hereafter amended, or administering state funds allocated to the Nebraska Community Aging Services Act;

(2) To cooperate with similar departments, commissions, or councils in the federal government and in other states;

(3) To adopt and promulgate rules, regulations, and bylaws governing its procedure and activities and as necessary to carry out the policies of the department and the policies

prescribed by the Administration on Aging pursuant to the federal Older Americans Act, as now or hereafter amended;

(4) To create committees to aid in the discharge of its powers and duties;

(5) To cooperate with and assist other state and local governmental agencies and officials on matters relating to services for older individuals;

(6) To divide the state into planning-and-service areas as provided in section 71-807 for behavioral health regions, except that Regions 3 and 5 may each be divided into two planning-and-service areas with boundaries as established by the department for planning-and-service areas in existence in those regions on July 1, 1982;

(7) To establish minimum standards for program operations and to adopt and promulgate rules and regulations for the performance of area agencies on aging and for any services provided by such area agencies on aging which are funded in whole or in part under the Nebraska Community Aging Services Act or the federal Older Americans Act, as now or hereafter amended;

(8) To require the submission of a one-year and a five-year area plan and budget by each area agency on aging or agency seeking designation as an area agency on aging. Such plans and budgets shall be submitted sixty days prior to the start of each fiscal year in accordance with the uniform area plan format and other instructions issued by the department;

(9) To review and approve a one-year and a five-year area plan and budget for the support of each area agency on aging and the provision of eligible activities and services as defined in section 81-2222;

(10) To adopt and submit to the Legislature a community aging services budget;

(11) To review the performance of each area agency on aging and, based on the department-approved area plan and budget, to determine the continued designation or the withdrawal of the designation of an area agency on aging receiving or requesting resources through the state or under the Nebraska Community Aging Services Act or the federal Older Americans Act, as now or hereafter amended. After consultation with the director of the area agency on aging and the governing unit of the area agency on aging, the department may withdraw a designation when it can be shown that federal or state laws, rules, or regulations have not been complied with, state or federal funds are not being expended for the purposes for which they were intended, or older individuals are not receiving appropriate services within available resources. Withdrawal of a designation may be appealed to the department. Upon withdrawal of a designation, the department may temporarily perform all or part of the functions and responsibilities of the area agency on aging, may designate another agency to perform such functions and responsibilities identified by the department until the designation of a new area agency on aging, and, when deemed necessary, may temporarily deliver services to assure continuity;

(12) To conduct continuing studies and analyses of the problems faced by older individuals within the state and develop such recommendations for administrative or legislative action as appear necessary;

(13) To develop grants and plans, enter into contracts, accept gifts, grants, and federal funds, and do all things necessary and proper to discharge these powers and duties;

(14) To accept and administer any other programs or resources delegated, designated, assigned, or awarded to the department from public or private sources;

(15) To report and make recommendations to the Governor and the Legislature on the activities of the department and the committee and improvements or additional resources needed to promote the general welfare of older individuals in Nebraska. Each member of the Legislature shall receive a copy of the report; and

(16) Such other powers and duties necessary to effectively implement the Nebraska Community Aging Services Act.

Source: Laws 1982, LB 404, § 13; Laws 1991, LB 58, § 15; Laws 1993, LB 818, § 1; Laws 1996, LB 1044, § 873; Laws 2004, LB 1083, § 128; Laws 2007, LB296, § 764.
Operative date July 1, 2007.

81-2226 Area agency on aging; malfeasance; effect. In the event of a documented malfeasance on the part of any area agency on aging in the administration of its area plan, and the failure of the governing unit of the area agency to take corrective action within a reasonable time, the department shall, with the advice of the committee, terminate funding to the area agency governing unit by disapproving the area plan for that area agency on aging.

Source: Laws 1982, LB 404, § 26; Laws 1996, LB 1044, § 874; Laws 2007, LB296, § 765.
Operative date July 1, 2007.

(b) CARE MANAGEMENT SERVICES

81-2229 Legislative intent. It is the intent of the Legislature that:

(1) The state establish a statewide system of care management units through the area agencies on aging to aid in the coordination of the delivery of a continuum of services targeted primarily to the state's older population;

(2) The continuum of services include the proper utilization of all available care resources, including community-based services and institutionalization, to ensure that persons are receiving, when reasonably possible, the level of care that best matches their level of need;

(3) The Department of Health and Human Services apply for and implement a Title XIX medicaid waiver as a way to provide care management services to medicaid clients and to control the rising costs of medicaid; and

(4) The Department of Health and Human Services develop a uniform method for data collection by care management units.

Source: Laws 1987, LB 42, § 1; Laws 1996, LB 1044, § 875; Laws 2007, LB296, § 766.
Operative date July 1, 2007.

(c) LONG-TERM CARE OMBUDSMAN

81-2241 Repealed. Laws 2007, LB 296, § 815.

81-2248 State long-term care ombudsman, defined. State long-term care ombudsman shall mean the person or persons appointed under section 81-2249 to fulfill the responsibilities of the office.

Source: Laws 1992, LB 677, § 12; Laws 2007, LB296, § 767.
Operative date July 1, 2007.

81-2249 Office; created; state long-term care ombudsman; appointed. Pursuant to the Older Americans Act, the office of the state long-term care ombudsman is hereby created. The department shall establish and operate the office. The chief executive officer of the department shall appoint the state long-term care ombudsman.

Source: Laws 1992, LB 677, § 13; Laws 2007, LB296, § 768.
Operative date July 1, 2007.

81-2250 Long-term care ombudsman program; established; contents. The department shall establish a long-term care ombudsman program consisting of the state long-term care ombudsman and any local long-term care ombudsman programs. The program, as approved and administered by the department, shall:

(1) Investigate and resolve complaints not reportable under the Adult Protective Services Act made by or on behalf of older individuals who are patients, residents, or clients of long-term care facilities relating to action, inaction, or decisions of providers of long-term care services or their representatives, of public agencies, or of social service agencies which may adversely affect the health, safety, welfare, or rights of such older individuals. The department shall adopt and promulgate rules and regulations regarding the handling of complaints received under this section, including procedures for conducting investigations of complaints. The rules and regulations shall include procedures to ensure that no state long-term care ombudsman or ombudsman advocate investigates any complaint involving a provider with which the representative was once employed or associated;

(2) Provide for the training of the state long-term care ombudsman and ombudsman advocates and promote the development of citizen organizations to participate in the program, provide training to ombudsman advocates and staff of local long-term care ombudsman programs, issue certificates attesting to the successful completion of the prescribed training, and provide ongoing technical assistance to such local programs;

(3) Analyze and monitor the development and implementation of federal, state, and local laws, regulations, and policies with respect to long-term care facilities and services and recommend any changes in such laws, regulations, and policies deemed by the long-term care ombudsman program to be appropriate;

(4) Establish a statewide, uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems. The data shall be submitted to the department at least on an annual basis;

(5) Prepare reports as requested by the department and provide policy, regulatory, and legislative recommendations to solve problems, resolve complaints, and improve the quality of care and life in long-term care facilities;

(6) Provide for public forums to discuss concerns and problems relating to action, inaction, or decisions that may adversely affect the health, safety, welfare, or civil rights of residents of long-term care facilities and their representatives, public agencies and entities, and social service agencies; and

(7) Provide information to public agencies, legislators, and others, as deemed necessary by the department, regarding the problems and concerns, including recommendations related to such problems and concerns, of older individuals residing in long-term care facilities.

Source: Laws 1992, LB 677, § 14; Laws 1996, LB 1044, § 884; Laws 2007, LB296, § 769.
Operative date July 1, 2007.

Cross Reference

Adult Protective Services Act, see section 28-348.

81-2251 Rules and regulations; state long-term care ombudsman; qualifications. The department shall adopt and promulgate rules and regulations to carry out the Long-Term Care Ombudsman Act. The department shall ensure that the state long-term care ombudsman has no conflicts of interest in fulfilling the duties of the office, is capable of administering the office impartially, has an understanding of long-term care issues, has experience in the fields of aging and health care, and has worked with and been involved in volunteer programs.

Source: Laws 1992, LB 677, § 15; Laws 2007, LB296, § 770.
Operative date July 1, 2007.

81-2252 Local long-term care ombudsman programs; designation; provisional status. The department may designate for two-year periods, within each planning-and-service area designated pursuant to section 81-2213, local long-term care ombudsman programs in accordance with rules and regulations established by the department. Such rules and regulations shall include specifications regarding the sites of the offices of the local long-term care ombudsman programs and requirements concerning staffing, levels of training required for ombudsman advocates and staff, standards of operation, and program review.

The office may withdraw or provisionally maintain the designation of an entity as a local long-term care ombudsman program if the entity fails to meet the rules and regulations established by the department. If the designation of a local long-term care ombudsman program is provisionally maintained, the office shall notify the program of the reasons for the provisional status, of the changes or corrections necessary for the removal of the provisional status, of the length of time permitted to make the changes or corrections, and that the office will withdraw the designation if the program does not comply with the requirements specified in the notice. If the designation of a local long-term care ombudsman program is withdrawn,

the office may provide for the continuation of long-term care ombudsman services for that area.

Source: Laws 1992, LB 677, § 16; Laws 2007, LB296, § 771.
Operative date July 1, 2007.

81-2255 Abuse, neglect, or exploitation; referral required; procedure. (1) When abuse, neglect, or exploitation of an older individual who is a patient, resident, or client of a long-term care facility is suspected, the long-term care ombudsman program shall make an immediate referral to the department or the appropriate law enforcement agency. The long-term care ombudsman program shall coordinate with adult protective services or the appropriate law enforcement agency, if requested, pursuant to any investigation of such abuse, neglect, or exploitation.

(2) Any state agency or board which responds to a complaint against a long-term care facility or an individual employed by a long-term care facility that was referred to the agency or board by the office shall forward to the office copies of related inspection reports, plans of correction, and notice of any citations and sanctions levied against the long-term care facility or the individual.

Source: Laws 1992, LB 677, § 19; Laws 1996, LB 1044, § 885; Laws 2007, LB296, § 772.
Operative date July 1, 2007.

81-2260 Complaints or investigations; confidentiality; exceptions. (1) Information relating to any complaints or investigation made pursuant to the Long-Term Care Ombudsman Act that discloses the identities of complainants, patients, residents, or clients shall remain confidential except:

(a) When disclosure is authorized in writing by the complainant, patient, resident, or client or the older individual's guardian or legal representative;

(b) When disclosure is necessary to an investigation of abuse, neglect, or exploitation and the disclosure is made to the Attorney General, the county attorney, or the department;

(c) When disclosure is necessary for the provision of services to the patient, resident, or client and the patient, resident, or client is unable to express written or oral consent; or

(d) Upon court order.

(2) Access to the records and files of the office relating to any complaint or investigation made pursuant to the Long-Term Care Ombudsman Act shall be permitted only at the discretion of the state long-term care ombudsman, except that the identity of any complainant, witness, patient, resident, or client shall not be disclosed by such ombudsman except:

(a) When disclosure is authorized in writing by such complainant, witness, patient, resident, or client or the older individual's guardian or legal representative;

(b) Upon court order; or

(c) Pursuant to subsection (3) of this section.

(3) The records and files of the office shall be released to adult protective services of the department if it so requests for purposes of the Adult Protective Services Act.

(4) The department shall have access to the records and files of the office to verify the effectiveness and quality of the long-term care ombudsman program.

Source: Laws 1992, LB 677, § 24; Laws 1996, LB 1044, § 886; Laws 2007, LB296, § 773.
Operative date July 1, 2007.

Cross Reference

Adult Protective Services Act, see section 28-348.

(d) PREADMISSION SCREENING

81-2265 Legislative intent. It is the intent of the Legislature that the Department of Health and Human Services shall amend its current medicaid waiver to provide any federal funding which may be available for the purpose of a pilot project for preadmission screening and that the department shall develop and implement such a pilot preadmission screening project.

Source: Laws 1993, LB 801, § 1; Laws 1996, LB 1044, § 887; Laws 2007, LB296, § 774.
Operative date July 1, 2007.

81-2267 Evaluation of pilot project. The Department of Health and Human Services shall evaluate the pilot project for the effectiveness of using medicaid funds, any savings of those funds realized which can be used to serve the ever-growing number of frail and vulnerable older individuals in Nebraska, and the effectiveness of preadmission screening and care management to divert individuals from nursing facility admission who do not need that level of care.

Source: Laws 1993, LB 801, § 3; Laws 1996, LB 1044, § 889; Laws 2007, LB296, § 775.
Operative date July 1, 2007.

81-2268 Medicaid waiver funds; use authorized. Services identified by care plans for those eligible for medical assistance whose care needs are appropriate for nursing facilities but whose needs can be met outside a nursing facility may be purchased with medicaid waiver funds available through the home and community-based waiver for the aged and disabled administered by the Department of Health and Human Services.

Source: Laws 1993, LB 801, § 4; Laws 1996, LB 1044, § 890; Laws 2007, LB296, § 776.
Operative date July 1, 2007.

ARTICLE 30

NEBRASKA HEALTH AND HUMAN SERVICES SYSTEM ACT

Section.

81-3001. Repealed. Laws 2007, LB 296, § 815.

81-3001.01. Repealed. Laws 2007, LB 296, § 815.

81-3004. Repealed. Laws 2007, LB 296, § 815.

81-3006. Repealed. Laws 2007, LB 296, § 815.

- 81-3007.01. Repealed. Laws 2007, LB 296, § 815.
- 81-3008. Repealed. Laws 2007, LB 296, § 815.
- 81-3009. Repealed. Laws 2007, LB 296, § 815.

81-3001 Repealed. Laws 2007, LB 296, § 815.

81-3001.01 Repealed. Laws 2007, LB 296, § 815.

81-3004 Repealed. Laws 2007, LB 296, § 815.

81-3006 Repealed. Laws 2007, LB 296, § 815.

81-3007.01 Repealed. Laws 2007, LB 296, § 815.

81-3008 Repealed. Laws 2007, LB 296, § 815.

81-3009 Repealed. Laws 2007, LB 296, § 815.

ARTICLE 31

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Section.

- 81-3101. Repealed. Laws 2007, LB 296, § 815.
- 81-3102. Repealed. Laws 2007, LB 296, § 815.
- 81-3103. Repealed. Laws 2007, LB 296, § 815.
- 81-3106. Repealed. Laws 2007, LB 296, § 815.
- 81-3107. Repealed. Laws 2007, LB 296, § 815.
- 81-3108. Repealed. Laws 2007, LB 296, § 815.
- 81-3109. Repealed. Laws 2007, LB 296, § 815.
- 81-3110. Act, how cited.
- 81-3111. Purposes of act.
- 81-3112. Programs, services, and duties transferred to Department of Health and Human Services.
- 81-3113. Department of Health and Human Services created; divisions.
- 81-3114. Chief executive officer; qualifications.
- 81-3115. Division directors; appointment; chief medical officer; duties.
- 81-3116. Responsibilities of divisions.
- 81-3117. Chief executive officer; duties.
- 81-3118. Confidential information; how treated; duties.
- 81-3119. Health and Human Services Cash Fund; created; investment.
- 81-3120. Petty cash funds authorized.
- 81-3121. Contracts, documents, funds, and records of departments transferred to Department of Health and Human Services; how treated.

- 81-3122. Rules, regulations, orders, judicial or administrative proceedings, and references in law; how treated.
- 81-3123. Employees of departments transferred to Department of Health and Human Services; how treated.
- 81-3124. Property of departments transferred to Department of Health and Human Services; how treated.
- 81-3125. Personnel who work with sex offenders; duties; department; maintain records; contents.

81-3101 Repealed. Laws 2007, LB 296, § 815.

81-3102 Repealed. Laws 2007, LB 296, § 815.

81-3103 Repealed. Laws 2007, LB 296, § 815.

81-3106 Repealed. Laws 2007, LB 296, § 815.

81-3107 Repealed. Laws 2007, LB 296, § 815.

81-3108 Repealed. Laws 2007, LB 296, § 815.

81-3109 Repealed. Laws 2007, LB 296, § 815.

81-3110 Act, how cited. Sections 81-3110 to 81-3124 shall be known and may be cited as the Health and Human Services Act.

Source: Laws 2007, LB296, § 1.
Operative date July 1, 2007.

81-3111 Purposes of act. The purposes of the Health and Human Services Act are to (1) provide for the administration of publicly funded health and human services programs and services in the State of Nebraska through the Department of Health and Human Services; (2) transfer programs, services, and duties of the Department of Health and Human Services, the Department of Health and Human Services Regulation and Licensure, and the Department of Health and Human Services Finance and Support to a single state agency to be known as the Department of Health and Human Services; (3) create six divisions within the Department of Health and Human Services; (4) require the appointment by the Governor of a single chief executive officer for the department, a director for each of the six divisions of the department, and a chief medical officer; and (5) clarify the department's core missions, scope, functions, and responsibilities; ensure and improve accountability, collaboration, and coordination; and enhance services provided to Nebraskans by the department.

Source: Laws 2007, LB296, § 2.
Operative date July 1, 2007.

81-3112 Programs, services, and duties transferred to Department of Health and Human Services. Effective July 1, 2007, all programs, services, and duties of the Department of Health and Human Services, the Department of Health and Human Services

Regulation and Licensure, and the Department of Health and Human Services Finance and Support shall be transferred to the Department of Health and Human Services.

Source: Laws 2007, LB296, § 3.
Operative date July 1, 2007.

81-3113 Department of Health and Human Services created; divisions. The Department of Health and Human Services is created. The department shall have six divisions to be known as (1) the Division of Behavioral Health, (2) the Division of Children and Family Services, (3) the Division of Developmental Disabilities, (4) the Division of Medicaid and Long-Term Care, (5) the Division of Public Health, and (6) the Division of Veterans' Homes.

Source: Laws 2007, LB296, § 4.
Operative date July 1, 2007.

81-3114 Chief executive officer; qualifications. The Governor shall appoint the chief executive officer of the Department of Health and Human Services who shall have recognized and demonstrated knowledge and expertise in the delivery of publicly funded health and human services programs and services and administrative experience in an executive capacity. The chief executive officer shall report to the Governor and serve at the pleasure of the Governor. The chief executive officer shall be subject to confirmation by a majority vote of the members of the Legislature.

Source: Laws 2007, LB296, § 5.
Operative date July 1, 2007.

81-3115 Division directors; appointment; chief medical officer; duties. (1) The Governor shall appoint a director for each division created in section 81-3113 who shall serve at the pleasure of the Governor and shall report to the chief executive officer. Each division director shall be subject to confirmation by a majority of the members of the Legislature.

(2) If the Director of Public Health is licensed to practice medicine and surgery in the State of Nebraska, he or she shall also be the chief medical officer. If the Director of Public Health is not licensed to practice medicine and surgery in the State of Nebraska, the Governor shall appoint a chief medical officer in addition to the Director of Public Health. The chief medical officer shall be licensed to practice medicine and surgery in the State of Nebraska, shall serve at the pleasure of the Governor, and shall be subject to confirmation by a majority of the members of the Legislature.

(3) The chief medical officer shall perform duties under the Uniform Credentialing Act as provided in section 38-1,101, shall be the final decisionmaker in contested cases of health care facilities defined in the Health Care Facility Licensure Act arising under the act and sections 71-6042, 71-6732, and 81-604.03, and shall perform such other duties as provided by law.

Source: Laws 2007, LB296, § 6; Laws 2007, LB463, § 1315.
Operative date July 1, 2007.

Note: This section passed in Laws 2007, LB 296, section 6, and was amended by Laws 2007, LB 463, section 1315.

Note: The changes made by LB 463 became operative December 1, 2008.

Cross Reference

Health Care Facility Licensure Act, see section 71-401.

Uniform Credentialing Act, see section 38-101.

81-3116 Responsibilities of divisions. The responsibilities of the divisions created in section 81-3113 include, but are not limited to, the following:

(1) The Division of Behavioral Health shall administer (a) the state hospitals for the mentally ill designated in section 83-305 and (b) publicly funded community-based behavioral health services;

(2) The Division of Children and Family Services shall administer (a) protection and safety programs and services, including child welfare programs and services and the Office of Juvenile Services, (b) economic and family support programs and services, and (c) service areas as may be designated by the chief executive officer or by the Director of Children and Family Services under authority of the chief executive officer;

(3) The Division of Developmental Disabilities shall administer (a) the Beatrice State Developmental Center and (b) publicly funded community-based developmental disabilities services;

(4) The Division of Medicaid and Long-Term Care shall administer (a) the medical assistance program also known as medicaid, (b) aging services, and (c) other related programs and services;

(5) The Division of Public Health shall administer (a) preventive and community health programs and services, (b) the regulation and licensure of health-related professions and occupations, and (c) the regulation and licensure of health care facilities and health care services; and

(6) The Division of Veterans' Homes shall administer (a) the Eastern Nebraska Veterans' Home, (b) the Grand Island Veterans' Home, (c) the Norfolk Veterans' Home, and (d) the Western Nebraska Veterans' Home.

Source: Laws 2007, LB296, § 7.
Operative date July 1, 2007.

81-3117 Chief executive officer; duties. The chief executive officer of the Department of Health and Human Services shall:

(1) Supervise and be responsible for the administration of the department and the appointment and removal of employees;

(2) Manage services and programs of the department, whether contracted or delivered directly by the state, including, but not limited to: (a) Delegating appropriate powers and duties to division directors and employees of the department; (b) assuring coordination throughout the department for consumers of services; (c) providing services in accordance with established policies, desired outcomes, priorities, and goals; (d) identifying strategies jointly with communities for accomplishing identified goals and outcomes; and (e) assuring

service coordination and access through public education and information, community resource development, technical assistance, and coordinated service management;

(3) Enter into such agreements as may be necessary or appropriate to provide services and manage funds as provided under the Health and Human Services Act, including the administration of federal funds granted to the state in the furtherance of the activities of the department;

(4) Allow for the transfer of personnel and for the authority of one division of the department to act as the agent for another division of the department in carrying out certain services or functions, or a portion of them, or for the joint implementation of public or private grants or performance of contracts;

(5) Recommend to the Legislature and the Governor legislation he or she deems necessary or appropriate;

(6) Consult and cooperate with other state agencies so as to coordinate activities in an effective manner with related activities in other agencies;

(7) Adopt and promulgate necessary rules and regulations to implement programs and activities as required by state law or under federal law or regulation governing federal funds, grants, or contracts administered by the department. The authority to adopt and promulgate rules and regulations may be delegated by the chief executive officer to the division directors of the department;

(8) Under the direction and guidance of the Adjutant General and the Nebraska Emergency Management Agency, to coordinate assistance programs established by the Adjutant General under section 81-829.72 with the programs of the department;

(9) Coordinate budget, research, and data collection efforts to insure effectiveness of the department;

(10) Ensure that the Appropriations Committee of the Legislature is provided any information the committee requires to make funding determinations and budget recommendations to the Legislature, including, but not limited to, specific program budgets, internal budget requests, fiscal reports, and appearances by division directors, division administrators, program administrators, and subprogram directors before the committee to present department, division, program, and subprogram budget requests;

(11) Seek grants and other funds from federal and other public and private sources to carry out the purposes of the act and the missions and purposes of the department and to accept and administer programs or resources delegated, designated, assigned, or awarded by the Governor or by other public and private sources;

(12) Act as the agent of the federal government in matters of mutual concern in conformity with the Health and Human Services Act and the scope of authority of the department as provided by law;

(13) Facilitate joint planning initiatives in the department;

(14) Adopt and promulgate confidentiality rules and regulations as provided in section 81-3118;

- (15) Delegate the authority to act as decisionmaker in contested cases to the division directors;
- (16) Encourage and direct initiatives and collaboration in the department; and
- (17) Perform such other duties as are provided by law.

Source: Laws 2007, LB296, § 8.
Operative date July 1, 2007.

81-3118 Confidential information; how treated; duties. (1) The chief executive officer of the Department of Health and Human Services may adopt and promulgate rules and regulations which prescribe standards and procedures for access to and security of confidential information among the divisions within the department and within each division. These include standards for collection, maintenance, and use of information in electronic or other storage media. Procedures for disclosure of confidential information among the divisions shall include a determination by the chief executive officer on whether confidential information should be shared among the divisions. In making the determination, the following factors shall be considered:

- (a) The law governing the confidentiality of the information and the original purpose for which the information was collected;
- (b) The potential for harm to an individual if the disclosure is made;
- (c) Whether the disclosure will enhance the coordination of policy development, service provision, eligibility determination, program management, quality assurance, financial services, or support services;
- (d) Whether the information is a trade secret, academic or scientific research work which is in progress and unpublished, or other proprietary or commercial information;
- (e) Any limitations placed on the use of the information by the original source of the information;
- (f) Whether the proposed use is for a bona fide research project or study, the procedures and methodology of which meet the standards for research in the particular body of knowledge;
- (g) The security of the information, including the scope of access, ongoing security, publication, and disposal of the information at the end of its use;
- (h) The degree to which aggregate or summary data may identify an individual whose privacy would otherwise be protected; and
- (i) Whether such information constitutes criminal intelligence information maintained by correctional or law enforcement authorities.

(2) Otherwise confidential information may be disclosed among the divisions pursuant to subsection (1) of this section if not expressly prohibited by law. Such disclosure shall not be considered a public disclosure or make the record a public record. Any further disclosure may be made only if permitted by law or a policy governing the originating division. Each division shall observe confidentiality of human resources information and employment records, except that the divisions shall act and be considered to be one agency for purposes of human resources issues, employment records, and related matters.

(3) All officials and employees shall be informed regarding laws, rules and regulations, and policies governing confidential information and acknowledge receipt of that information.

Source: Laws 2007, LB296, § 9.
Operative date July 1, 2007.

81-3119 Health and Human Services Cash Fund; created; investment. The Health and Human Services Cash Fund is created and shall consist of funds from contracts, grants, gifts, or fees. Any money in the Department of Health and Human Services Cash Fund, the Department of Health and Human Services Finance and Support Cash Fund, and the Department of Health and Human Services Regulation and Licensure Cash Fund on July 1, 2007, shall be transferred to the Health and Human Services 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 2007, LB296, § 10.
Operative date July 1, 2007.

Cross Reference

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

81-3120 Petty cash funds authorized. The chief executive officer of the Department of Health and Human Services may request that petty cash funds be created at specific locations which may be used for fees and costs related to the prosecution of support establishment, modification, and enforcement cases, including, but not limited to, court costs, filing fees, service of process fees, sheriff's costs, garnishment and execution fees, court reporter and transcription costs, costs related to appeals, witness and expert witness fees, and fees or costs for obtaining necessary documents. The petty cash funds shall be created and administered as provided in section 81-104.01, except that the amount in each petty cash fund shall not be less than twenty-five dollars nor more than one thousand dollars.

Source: Laws 2007, LB296, § 11.
Operative date July 1, 2007.

81-3121 Contracts, documents, funds, and records of departments transferred to Department of Health and Human Services; how treated. On and after July 1, 2007, whenever the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure is referred to or designated by any contract or other document in connection with the duties and functions transferred to the Department of Health and Human Services pursuant to the Health and Human Services Act, such reference or designation shall apply to such department. All contracts entered into by the agencies prior to July 1, 2007, in connection with the duties and functions transferred to the department are hereby recognized, with the department succeeding to all rights and obligations under such contracts. Any

cash funds, custodial funds, gifts, trusts, grants, and any appropriations of funds from prior fiscal years available to satisfy obligations incurred under such contracts shall be transferred and appropriated to the department for the payments of such obligations. All licenses, certificates, registrations, permits, seals, or other forms of approval issued by the departments in accordance with functions or duties transferred to the department shall remain valid as issued under the names of the original departments unless revoked or their effectiveness is otherwise terminated as provided by law. All documents and records transferred, or copies of the same, may be authenticated or certified by the department for all legal purposes.

Source: Laws 2007, LB296, § 12.
Operative date July 1, 2007.

81-3122 Rules, regulations, orders, judicial or administrative proceedings, and references in law; how treated. All rules, regulations, and orders of the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure or their predecessor agencies adopted prior to July 1, 2007, in connection with the powers, duties, and functions transferred to the Department of Health and Human Services pursuant to the Health and Human Services Act, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to July 1, 2007, or which could have been commenced prior to that date, by or against any of such departments, or any director or employee thereof in such director's or employee's official capacity or in relation to the discharge of his or her official duties, shall abate by reason of the transfer of duties and functions from the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure to the Department of Health and Human Services.

On and after July 1, 2007, unless otherwise specified, whenever any provision of law refers to the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure in connection with duties and functions transferred to the Department of Health and Human Services, such law shall be construed as referring to such department.

Source: Laws 2007, LB296, § 13.
Operative date July 1, 2007.

81-3123 Employees of departments transferred to Department of Health and Human Services; how treated. On and after July 1, 2007, positions of employment in the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, and the Department of Health and Human Services Regulation and Licensure related to the powers, duties, and functions transferred pursuant to the Health and Human Services Act are transferred to the Department of Health and Human Services. For purposes of the transition, employees of the former departments shall be considered

employees of the Department of Health and Human Services and shall retain their rights under the state personnel system or pertinent bargaining agreement, and their service shall be deemed continuous. This section does not grant employees any new rights or benefits not otherwise provided by law or bargaining agreement or preclude the divisions or the chief executive officer of the Department of Health and Human Services from exercising any of the prerogatives of management set forth in section 81-1311 or as otherwise provided by law. This section is not an amendment to or substitute for the provisions of any existing bargaining agreements.

Source: Laws 2007, LB296, § 14.
Operative date July 1, 2007.

81-3124 Property of departments transferred to Department of Health and Human Services; how treated. On July 1, 2007, all items of property, real and personal, including office furniture and fixtures, books, documents, and records of the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, and the Department of Health and Human Services Regulation and Licensure pertaining to the duties and functions transferred to the Department of Health and Human Services pursuant to the Health and Human Services Act shall become the property of such department.

Source: Laws 2007, LB296, § 15.
Operative date July 1, 2007.

81-3125 Personnel who work with sex offenders; duties; department; maintain records; contents. (1) The personnel of the Department of Health and Human Services who work with sex offenders shall develop, maintain, and adhere to written policies or administrative rules and regulations governing the transfer and discharge of sex offenders treated in a program of the department. At a minimum, the policies or rules and regulations shall contain:

(a) Specific requirements regarding treatment that sex offenders are required to meet in order to be transferred from one sex offender treatment unit to another or to be discharged from treatment; and

(b) A list of the personnel of the department who are required to review and document their opinions regarding the treatment progress of each sex offender prior to his or her transfer or discharge.

(2) The department shall maintain, along with each sex offender's permanent medical records, complete treatment records for sex offenders treated in a program of the department, including documentation of the reason behind transfer and discharge decisions. At a minimum, each sex offender's records shall contain:

(a) Detailed documentation that the sex offender has or has not met the requirements for transfer or discharge; and

(b) Signed comments from all personnel of the department required to review the sex offender's treatment progress prior to his or her transfer or discharge.

Source: Laws 2007, LB610, § 1.
Effective date September 1, 2007.

ARTICLE 32

**DEPARTMENT OF HEALTH AND HUMAN
SERVICES REGULATION AND LICENSURE**

Section.

- 81-3201. Repealed. Laws 2007, LB 296, § 815.
- 81-3202. Repealed. Laws 2007, LB 296, § 815.
- 81-3203. Repealed. Laws 2007, LB 296, § 815.
- 81-3206. Repealed. Laws 2007, LB 296, § 815.
- 81-3207. Repealed. Laws 2007, LB 296, § 815.
- 81-3208. Repealed. Laws 2007, LB 296, § 815.
- 81-3209. Repealed. Laws 2007, LB 296, § 815.
- 81-3210. Repealed. Laws 2007, LB 296, § 815.
- 81-3211. Repealed. Laws 2007, LB 296, § 815.

81-3201 Repealed. Laws 2007, LB 296, § 815.

81-3202 Repealed. Laws 2007, LB 296, § 815.

81-3203 Repealed. Laws 2007, LB 296, § 815.

81-3206 Repealed. Laws 2007, LB 296, § 815.

81-3207 Repealed. Laws 2007, LB 296, § 815.

81-3208 Repealed. Laws 2007, LB 296, § 815.

81-3209 Repealed. Laws 2007, LB 296, § 815.

81-3210 Repealed. Laws 2007, LB 296, § 815.

81-3211 Repealed. Laws 2007, LB 296, § 815.

ARTICLE 33

**DEPARTMENT OF HEALTH AND HUMAN
SERVICES FINANCE AND SUPPORT**

Section.

- 81-3301. Repealed. Laws 2007, LB 296, § 815.
- 81-3302. Repealed. Laws 2007, LB 296, § 815.
- 81-3303. Repealed. Laws 2007, LB 296, § 815.
- 81-3306. Repealed. Laws 2007, LB 296, § 815.

- 81-3307. Repealed. Laws 2007, LB 296, § 815.
- 81-3308. Repealed. Laws 2007, LB 296, § 815.
- 81-3309. Repealed. Laws 2007, LB 296, § 815.
- 81-3310. Repealed. Laws 2007, LB 296, § 815.
- 81-3311. Repealed. Laws 2007, LB 296, § 815.

81-3301 Repealed. Laws 2007, LB 296, § 815.

81-3302 Repealed. Laws 2007, LB 296, § 815.

81-3303 Repealed. Laws 2007, LB 296, § 815.

81-3306 Repealed. Laws 2007, LB 296, § 815.

81-3307 Repealed. Laws 2007, LB 296, § 815.

81-3308 Repealed. Laws 2007, LB 296, § 815.

81-3309 Repealed. Laws 2007, LB 296, § 815.

81-3310 Repealed. Laws 2007, LB 296, § 815.

81-3311 Repealed. Laws 2007, LB 296, § 815.

ARTICLE 35

GEOLOGISTS REGULATION ACT

Section.

81-3541. Licensure; activities exempt.

81-3541 Licensure; activities exempt. (1) The following activities do not require licensure as a geologist under the Geologists Regulation Act:

(a) Geological work performed by an employee or a subordinate of a professional geologist if the work does not include responsible charge of geological work and is performed under the direct supervision of a professional geologist who is and remains responsible for such work;

(b) Geological work performed exclusively in the exploration for and development of energy resources and base, precious, and nonprecious minerals, including sand, gravel, and aggregate, and not having a substantial impact upon the public health, safety, and welfare, as determined by the board;

(c) Geologic research conducted through academic institutions, agencies of the federal or state governments, or nonprofit research institutions;

(d) Teaching in geology or related physical or natural sciences;

(e) Work performed by a professional engineer appropriately licensed in this state that is within the generally accepted scope of engineering practice;

(f) The practice of any other legally recognized profession;

(g) The practice of or offer to practice geology by a person not a resident of and having no established place of business in this state who desires to practice geology for a specific project. The person shall make application to the board in writing, and after payment of a fee established by the board by rule and regulation, such person may be issued a temporary permit for a definite period of time not to exceed one year if the person is legally qualified by licensure to practice geology in his or her own state or country. No right to practice geology shall accrue to such applicant with respect to any other work not set forth in the permit;

(h) Work, which includes subsurface excavation, soil and water analysis, and routine environmental monitoring, such as sample collection and water level gauging, performed by an organization for itself and in accordance with other requirements of law;

(i) The work of employees of a political subdivision or state agency charged with natural resources conservation performing, in accordance with other requirements of law, their customary duties in operations, maintenance, and environmental monitoring;

(j) The work of employees and agents of a political subdivision or rural electric cooperative performing, in accordance with other requirements of law, their customary duties in routine utility line construction, operations, and maintenance;

(k) Work customarily performed by chemists, hydrologists, archeologists, geographers, pedologists, agronomists, and soil scientists; and

(l) Work performed in the construction of water wells as defined in section 46-1212, the installation of pumps and pumping equipment into water wells, and the decommissioning of water wells.

(2) If the board determines with respect to a particular function that the public is adequately protected without the necessity of a professional geologist performing certain services, the board may waive the requirements of the act with respect to the function.

(3) This section shall not be construed so as to prohibit the testimony of any individual before the Nebraska Oil and Gas Conservation Commission.

Source: Laws 1998, LB 1161, § 88; Laws 1998, LB 1209, § 31; Laws 2007, LB664, § 1.
Effective date September 1, 2007.

ARTICLE 36

RURAL DEVELOPMENT COMMISSION

Section.

81-3602. Rural Development Commission; members; terms; meetings; expenses.

81-3602 Rural Development Commission; members; terms; meetings; expenses. (1)(a) The Rural Development Commission shall consist of members who represent a wide range of rural Nebraska interests.

(b) The Governor shall appoint four members to the commission. The Governor shall appoint a representative of his or her office and one representative from each of the Department of Economic Development, the Department of Agriculture, and the Department of Health and Human Services.

(c) The Speaker of the Legislature shall appoint one member of the Legislature to the commission.

(d) Other members shall be appointed by the Governor to represent federal agencies, local governments, tribal governments, nonprofit organizations, regional economic development organizations, the private sector, postsecondary education, and youth.

(e) The chairperson and vice-chairperson of the commission shall be elected by a majority of the members of the commission at the first commission meeting in odd-numbered years and shall each serve a two-year term as chairperson and vice-chairperson, respectively.

(2) The commission shall meet at the call of the chairperson or a majority of the members. The chairperson shall call such meetings as he or she determines necessary to fulfill the duties of the commission. A quorum shall be one-half of the members.

(3) The members of the commission shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177 and pursuant to policies of the commission.

Source: Laws 1993, LB 190, § 2; R.S.1943, (1994), § 81-1283; Laws 1998, LB 1053, § 2; Laws 2003, LB 48, § 1; Laws 2003, LB 48, § 3; Laws 2007, LB296, § 777.
Operative date July 1, 2007.

CHAPTER 83

STATE INSTITUTIONS

Article.

1. Management.
 - (a) General Provisions. 83-101.08 to 83-121.
 - (b) Officers and Employees. 83-125 to 83-130.
 - (c) Property and Supplies. 83-134.
3. Hospitals.
 - (b) State Hospitals for the Mentally Ill. 83-305.03 to 83-348.
 - (d) Cost of Patient Care. 83-363 to 83-380.
 - (e) Residential Facilities. 83-381 to 83-390.
4. Penal and Correctional Institutions.
 - (l) Incarceration Work Camps. 83-4,142 to 83-4,146.
8. Interstate Compact on Mental Health. 83-802.
9. Department of Correctional Services.
 - (a) General Provisions. 83-901, 83-916.
12. Developmental Disabilities Services. 83-1204 to 83-1216.

ARTICLE 1

MANAGEMENT

(a) GENERAL PROVISIONS

Section.

- 83-101.08. Coordination of activities; duties.
- 83-107.01. Department of Health and Human Services; official names of institutions under supervision.
- 83-113. Department of Health and Human Services; examination of employees; investigation of alleged abuses; report.
- 83-114. Department of Health and Human Services; investigatory powers; interference with investigation; penalty; privileges of witnesses; contempt.
- 83-115. Department of Health and Human Services; investigation; legislative committee; powers of committee.
- 83-121. School District Reimbursement Fund; created; use; investment.

(b) OFFICERS AND EMPLOYEES

- 83-125. Repealed. Laws 2007, LB 296, § 815.
- 83-126. Facilities; chief executive officer; appointment.
- 83-130. Emergency Revolving Fund; amount; source; accounting.

(c) PROPERTY AND SUPPLIES

- 83-134. Repealed. Laws 2007, LB 256, § 17.

(a) GENERAL PROVISIONS

83-101.08 Coordination of activities; duties. The Department of Health and Human Services shall consult and cooperate with the Department of Correctional Services so as to coordinate in an effective manner the activities of the departments with those related activities affecting the welfare of persons which are the responsibility of the Department of Health and Human Services and the Department of Correctional Services.

Source: Laws 1961, c. 416, § 7, p. 1266; Laws 1973, LB 563, § 18; Laws 1996, LB 1044, § 894; Laws 2007, LB296, § 778.
Operative date July 1, 2007.

83-107.01 Department of Health and Human Services; official names of institutions under supervision. The official names of the state institutions under the supervision of the Department of Health and Human Services shall be as follows: (1) Beatrice State Developmental Center, (2) Lincoln Regional Center, (3) Norfolk Regional Center, (4) Hastings Regional Center, (5) Grand Island Veterans' Home, (6) Norfolk Veterans' Home, (7) Western Nebraska Veterans' Home, (8) Youth Rehabilitation and Treatment Center-Kearney, (9) Youth Rehabilitation and Treatment Center-Geneva, and (10) the Thomas Fitzgerald Veterans' Home prior to July 1, 2007, and, on and after July 1, 2007, the Eastern Nebraska Veterans' Home.

Source: Laws 1945, c. 250, § 1, p. 786; Laws 1949, c. 291, § 1, p. 994; Laws 1951, c. 318, § 1, p. 1086; Laws 1955, c. 341, § 2, p. 1055; Laws 1959, c. 418, § 9, p. 1403; Laws 1959, c. 419, § 10, p. 1412; Laws 1961, c. 416, § 12, p. 1269; Laws 1963, c. 528, § 2, p. 1656; Laws 1969, c. 814, § 6, p. 3061; Laws 1969, c. 818, § 7, p. 3117; Laws 1972, LB 1253, § 1; Laws 1973, LB 563, § 19; Laws 1975, LB 466, § 1; Laws 1976, LB 974, § 1; Laws 1996, LB 1044, § 896; Laws 1997, LB 396, § 22; Laws 1998, LB 1073, § 167; Laws 2006, LB 994, § 146; Laws 2007, LB296, § 779.
Operative date July 1, 2007.

Cross Reference

For provisions relating to the Beatrice State Developmental Center, see sections 83-217 to 83-227.02.

For provisions relating to the Nebraska veterans' homes, see section 80-314 et seq.

For provisions relating to the state hospitals for the mentally ill, see sections 83-305 to 83-357.

83-113 Department of Health and Human Services; examination of employees; investigation of alleged abuses; report. The Department of Health and Human Services may examine any of the officers, attendants, guards, and other employees and make such inquiries as will determine their fitness for their respective duties and shall investigate and report to the Governor any abuses or wrongs alleged to exist in the institution.

Source: Laws 1913, c. 179, § 18, p. 542; R.S.1913, § 7196; C.S.1922, § 6847; C.S.1929, § 83-118; R.S.1943, § 83-113; Laws 1961, c. 416, § 16, p. 1271; Laws 1996, LB 1044, § 902; Laws 2007, LB296, § 780.
Operative date July 1, 2007.

83-114 Department of Health and Human Services; investigatory powers; interference with investigation; penalty; privileges of witnesses; contempt. The Department of Health and Human Services shall have the power to summon and examine witnesses under oath, to examine books and papers pertaining to the subject under investigation, and to compel the production of such books and papers. Witnesses who are not

employees of the state shall receive the same fees as witnesses in civil cases in the district court, and their fees shall be paid by vouchers. Any officer or employee who interferes in any manner with the department's official investigation shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be removed from his or her position, and be fined in a sum not less than ten dollars nor more than one hundred dollars. The claim that any testimony or evidence sought to be elicited or produced may tend to incriminate the person giving or producing it, or expose him or her to public ignominy, shall not excuse him or her from testifying or producing the evidence, but any evidence given by a witness at such an investigation shall not be used against him or her in a criminal prosecution. A witness shall not be exempt from prosecution and punishment for perjury for testifying falsely at an investigation. It shall be the duty of the department to cause such testimony to be filed in the office of the department as soon thereafter as practicable, and such testimony shall be open for inspection. Any person failing to obey the orders of the department, issued under the provisions of this section, shall be reported by the department to the district court, or any judge thereof, and shall be dealt with by the court or judge as for contempt of court.

Source: Laws 1913, c. 179, § 19, p. 542; R.S.1913, § 7197; C.S.1922, § 6848; C.S.1929, § 83-119; R.S.1943, § 83-114; Laws 1961, c. 416, § 17, p. 1271; Laws 1996, LB 1044, § 903; Laws 2007, LB296, § 781. Operative date July 1, 2007.

Cross Reference

For witness fees in district court, see section 33-139.

83-115 Department of Health and Human Services; investigation; legislative committee; powers of committee. The Department of Health and Human Services shall be prepared to give any information desired by the Legislature concerning the institutions under its control, and its administration shall be subject to examination under oath by a legislative committee, touching any matter in regard to which the Legislature may desire information concerning the condition of the institutions, their inmates, and the performance of their duties by the department. The committee may call and examine under oath any other persons as witnesses in such investigation. Such examinations shall be conducted in the manner and subject to the provisions of section 83-114.

Source: Laws 1913, c. 179, § 20, p. 543; R.S.1913, § 7198; C.S.1922, § 6849; C.S.1929, § 83-120; R.S.1943, § 83-115; Laws 1961, c. 416, § 18, p. 1272; Laws 1996, LB 1044, § 904; Laws 2007, LB296, § 782. Operative date July 1, 2007.

83-121 School District Reimbursement Fund; created; use; investment. There is hereby created the School District Reimbursement Fund for use by the Department of Health and Human Services. The fund shall consist of money received from school districts or the department pursuant to section 79-1152 for the operation of special education programs within the department. The fund shall be used for the operation of such programs pursuant to sections 79-1152, 79-1153, and 79-1155 to 79-1158.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1994, LB 1194, § 11; Laws 1995, LB 7, § 139; Laws 1996, LB 900, § 1066; Laws 1996, LB 1044, § 907; Laws 2007, LB296, § 783.
Operative date July 1, 2007.

Cross Reference

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

(b) OFFICERS AND EMPLOYEES

83-125 Repealed. Laws 2007, LB 296, § 815.

83-126 Facilities; chief executive officer; appointment. The chief executive officer of the Department of Health and Human Services shall appoint the chief executive officer of each facility referred to in section 83-107.01. Each chief executive officer shall report to the chief executive officer of the department or his or her designee and shall serve full time and without term at the pleasure of the chief executive officer of the department.

Source: Laws 1996, LB 1155, § 83; Laws 1997, LB 307, § 220; Laws 2002, LB 1062, § 66; Laws 2007, LB296, § 784.
Operative date July 1, 2007.

83-130 Emergency Revolving Fund; amount; source; accounting. An Emergency Revolving Fund, not to exceed three thousand dollars for any one institution, upon order of the Department of Health and Human Services, shall be drawn from the State Treasurer, to be used by the chief executive officer of each institution as an emergency cash fund. The fund shall be drawn from the general maintenance appropriation for the department. An accounting of this fund shall be made by each executive officer once each month to the department.

Source: Laws 1913, c. 179, § 15, p. 541; R.S.1913, § 7193; C.S.1922, § 6844; C.S.1929, § 83-115; Laws 1941, c. 186, § 1, p. 754; C.S.Supp.,1941, § 83-115; R.S.1943, § 83-130; Laws 1951, c. 321, § 1, p. 1093; Laws 1996, LB 1044, § 909; Laws 2007, LB296, § 785.
Operative date July 1, 2007.

(c) PROPERTY AND SUPPLIES

83-134 Repealed. Laws 2007, LB 256, § 17.

ARTICLE 3

HOSPITALS

(b) STATE HOSPITALS FOR THE MENTALLY ILL

Section.

- 83-305.03. University of Nebraska Medical Center; temporary transfers of individuals from other institutions; procedure; responsibility; expense.
 83-324. Department; voluntary application for admission.
 83-336. Department; mental health board; forms; rules and regulations.
 83-348. State hospitals for the mentally ill; patients whose legal settlement has not been ascertained; state to bear expense.

(d) COST OF PATIENT CARE

- 83-363. Terms, defined.
 83-365. Cost of patient care; department; determine.
 83-366. Cost of patient care; assess against patient or relatives; limitations.
 83-373. Cost of patient care; determination; redetermination annually.
 83-374. Cost of patient care; hearing; appeal.
 83-376. Cost of patient care; failure of patient or relative to pay; cost to be paid by county and state.
 83-379. Cost of patient care; fraudulent transfers; effect.
 83-380. Cost of patient care; Director of Administrative Services; notify county clerk of amount due; levy; disbursement; withholding of funds by state.

(e) RESIDENTIAL FACILITIES

- 83-381. Terms, defined.
 83-382. Residential facilities; admission; department; jurisdiction.
 83-383. Residential facilities; admission; application; by whom; appointment of guardian.
 83-384. Residential facilities; application for admission; contents.
 83-385. Residential facilities; application for admission; referral; return of findings.
 83-386. Residential facilities; admission; selection by department; priority.
 83-387. Residential facilities; patient; discharge or transfer; notice; responsibility of department.
 83-390. Residential facilities; persons admitted; rights retained; rules and regulations.

(b) STATE HOSPITALS FOR THE MENTALLY ILL

83-305.03 University of Nebraska Medical Center; temporary transfers of individuals from other institutions; procedure; responsibility; expense. The Department of Health and Human Services or the Director of Correctional Services may order the temporary transfer of any person committed to the Department of Health and Human Services or the Department of Correctional Services to the University of Nebraska Medical Center with the concurrence of the chancellor thereof for special diagnosis and treatment of any illness such person may suffer which cannot be properly diagnosed or treated by the medical facilities of the institution of which he or she is a patient or inmate. The responsibility of guarding any such patient or inmate transferred shall remain with the institution of which he

or she is a patient or inmate. The Department of Health and Human Services or the Department of Correctional Services shall pay, out of the proper account, all expenses incurred by the University of Nebraska Medical Center on behalf of any patient or inmate so transferred by the respective department.

Source: Laws 1957, c. 389, § 1, p. 1348; Laws 1963, c. 528, § 5, p. 1657; Laws 1969, c. 817, § 75, p. 3109; Laws 1975, LB 466, § 4; Laws 1987, LB 112, § 4; Laws 1996, LB 1044, § 940; Laws 2007, LB296, § 786.
Operative date July 1, 2007.

83-324 Department; voluntary application for admission. The Department of Health and Human Services may accept patients for care and treatment upon the written application of a patient. Such written application may be made by persons desiring to receive care and treatment in one of the state hospitals for the mentally ill to the chief executive officer of the state hospital in which the patient wishes to receive treatment.

Source: Laws 1905, c. 82, § 3, p. 387; R.S.1913, § 7283; C.S.1922, § 6939; C.S.1929, § 83-744; R.S.1943, § 83-324; Laws 1947, c. 335, § 15, p. 1060; Laws 1969, c. 818, § 17, p. 3121; Laws 1976, LB 806, § 23; Laws 1996, LB 1155, § 88; Laws 1997, LB 307, § 224; Laws 2004, LB 1083, § 132; Laws 2007, LB296, § 787.
Operative date July 1, 2007.

83-336 Department; mental health board; forms; rules and regulations. The Department of Health and Human Services shall provide the mental health boards with blanks for warrants, certificates, and other forms, such as will enable them to comply with sections 83-313 to 83-357, and also with printed copies of the applicable rules and regulations of the department.

Source: G.S.1873, c. 31, § 55, p. 425; R.S.1913, § 7277; C.S.1922, § 6933; C.S.1929, § 83-738; R.S.1943, § 83-336; Laws 1947, c. 335, § 26, p. 1066; Laws 1969, c. 818, § 19, p. 3122; Laws 1996, LB 1155, § 89; Laws 1997, LB 307, § 225; Laws 2004, LB 1083, § 133; Laws 2007, LB296, § 788.
Operative date July 1, 2007.

83-348 State hospitals for the mentally ill; patients whose legal settlement has not been ascertained; state to bear expense. Patients in the state hospitals for the mentally ill having no legal settlement in this state, or whose legal settlement cannot be ascertained, shall be supported at the expense of the state. This section shall apply to all such patients now in the hospitals and shall include expenses already incurred and remaining unpaid. The Department of Health and Human Services may authorize the removal of any such patient at the expense of the state.

Source: G.S.1873, c. 31, § 27, p. 417; R.S.1913, § 7254; C.S.1922, § 6911; C.S.1929, § 83-716; R.S.1943, § 83-348; Laws 1947, c. 335, § 36, p. 1071; Laws 1969, c. 818, § 22, p. 3123; Laws 1996, LB 1044, § 944; Laws 2007, LB296, § 789.
Operative date July 1, 2007.

(d) COST OF PATIENT CARE

83-363 Terms, defined. As used in sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380, unless the context otherwise requires:

- (1) Department means the Department of Health and Human Services;
- (2) State institution means the state hospitals at Lincoln, Norfolk, and Hastings, the Beatrice State Developmental Center, and such other institutions as may hereafter be established by the Legislature for the care and treatment of persons with a mental disorder or mental retardation;
- (3) Relative means the spouse of a patient or, if the patient has no spouse and is under the age of majority at the time he or she is admitted, the parents of a patient in a state institution; and
- (4) Parents means either or both of a patient's natural parents unless such patient has been legally adopted by other parents, in which case parents means either or both of the adoptive parents.

Source: Laws 1969, c. 812, § 1, p. 3051; Laws 1975, LB 466, § 6; Laws 1986, LB 1177, § 46; Laws 1996, LB 1044, § 947; Laws 2007, LB296, § 790.
Operative date July 1, 2007.

83-365 Cost of patient care; department; determine. The department shall periodically determine the individual cost, exclusive of the cost of education, for the care, support, maintenance, and treatment of the patients in each state institution and for persons receiving treatment prescribed by an institution following release or without being admitted as a resident patient. In making such determinations, the department may use averaging methods for each institution if, in the judgment of the department, it is not practicable to compute the cost for each patient. The cost of capital expenditures and capital construction shall not be included in making such determinations.

Source: Laws 1969, c. 812, § 3, p. 3052; Laws 1996, LB 1044, § 948; Laws 2007, LB296, § 791.
Operative date July 1, 2007.

83-366 Cost of patient care; assess against patient or relatives; limitations. The department shall assess against the patient or his or her relatives all or such part of the cost determined under section 83-365 as they are able to pay, in the judgment of the department, except that a patient who is placed in a state institution to receive appropriate special education pursuant to the Special Education Act or his or her relatives shall be assessed only for medical care and medical treatment costs as determined pursuant to rules and regulations adopted and promulgated by the department in accordance with section 83-371.

Source: Laws 1969, c. 812, § 4, p. 3052; Laws 1985, LB 518, § 8; Laws 1987, LB 367, § 73; Laws 2007, LB296, § 792.
Operative date July 1, 2007.

Cross Reference

Special Education Act, see section 79-1110.

83-373 Cost of patient care; determination; redetermination annually. Any determination of the ability of a patient or relative to pay shall remain in effect until a redetermination is made. A redetermination shall be made annually and at such additional

times when, in the judgment of the department, it is appropriate to do so, or when a request is made by the patient or relative who is liable for the payments.

Source: Laws 1969, c. 812, § 11, p. 3054; Laws 2007, LB296, § 793.
Operative date July 1, 2007.

83-374 Cost of patient care; hearing; appeal. Any patient or relative aggrieved by a determination of ability to pay may request a hearing before the department. The department shall adopt and promulgate rules and regulations to govern the conduct of such hearings. The department may appoint an examiner who shall have power to preside at such hearing, administer oaths, examine witnesses, and take testimony and shall report the same to the department. Such hearings shall be held in the county in which the person requesting the hearing resides, if such person so requests, in which event it shall be the duty of the county board to attend such hearing. The department shall deliver the decision within sixty days after the conclusion of the hearing. Any patient or relative aggrieved by a decision following a hearing may appeal such decision, and such appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1969, c. 812, § 12, p. 3054; Laws 1988, LB 352, § 183; Laws 1989, LB 32, § 3; Laws 2007, LB296, § 794.
Operative date July 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

83-376 Cost of patient care; failure of patient or relative to pay; cost to be paid by county and state. When the full cost determined to be necessary for the care, support, maintenance, and treatment of any patient is not paid by the patient or his or her relatives within thirty days of receipt of such care, (1) the county in which the patient resides shall pay (a) the first fifteen dollars per day of the unpaid cost for each of the first thirty days at the Hastings Regional Center, the Lincoln Regional Center, the Norfolk Regional Center, or other inpatient treatment facility where the patient is receiving inpatient treatment pursuant to an order of a mental health board under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act, (b) the first ten dollars per day of the unpaid cost for each of the first thirty days at the Beatrice State Developmental Center, and (c) the first three dollars per day of the unpaid costs for each day after the first thirty days at any such institution, (2) the balance of the unpaid cost shall be borne by the state, and (3) the county in which the patient resides shall be credited by the department for amounts collected from such patient or his or her relatives in excess of the portion of such costs borne by the state.

Source: Laws 1969, c. 812, § 14, p. 3055; Laws 1971, LB 1012, § 1; Laws 1987, LB 112, § 5; Laws 1996, LB 1044, § 949; Laws 2004, LB 1083, § 141; Laws 2006, LB 1199, § 103; Laws 2007, LB296, § 795.
Operative date July 1, 2007.

Cross Reference

Nebraska Mental Health Commitment Act, see section 71-901.

Sex Offender Commitment Act, see section 71-1201.

83-379 Cost of patient care; fraudulent transfers; effect. In the absence of fraud, a patient and his relatives shall be liable only to the extent of assessments actually made against them respectively, in accordance with sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380. For the purposes of sections 83-227.01, 83-227.02, 83-350, and 83-363 to 83-380, it shall be deemed fraudulent for any patient or his relatives to transfer any assets or property to another person for the purpose of affecting the determination of ability to pay. When it is determined that such a fraudulent transfer has been made, the department shall consider the value of such assets or property transferred in determining the ability to pay under section 83-368 or 83-369.

Source: Laws 1969, c. 812, § 17, p. 3055; Laws 2007, LB296, § 796.
Operative date July 1, 2007.

83-380 Cost of patient care; Director of Administrative Services; notify county clerk of amount due; levy; disbursement; withholding of funds by state. Within thirty days after June 30, 1971, and each year thereafter the department shall certify to the Director of Administrative Services all amounts not previously certified due to each state institution from the several counties having patients chargeable thereto. The Director of Administrative Services shall thereupon notify the county clerk of each county of the amount each county owes. The county board shall add to its next levy an amount sufficient to raise the amount certified as due. The county shall pay the amount certified into the state treasury on or before the next June 1 following such certification.

From any county which fails to pay the total amount certified as due annually by the next June 1 following certification, there shall be withheld by the State Treasurer from the next allocation to such county due under the provisions of section 77-27,137, an amount sufficient to equal the amount unpaid from such county which amount shall be deducted from the county's portion and not the municipalities' under section 77-27,137.01. The State Treasurer shall credit the amount withheld the same as if the county had paid it when due as above provided.

Source: Laws 1969, c. 812, § 18, p. 3056; Laws 1971, LB 1012, § 2; Laws 1996, LB 1044, § 950; Laws 2007, LB296, § 797.
Operative date July 1, 2007.

(e) RESIDENTIAL FACILITIES

83-381 Terms, defined. As used in sections 83-217, 83-218, and 83-381 to 83-390, unless the context otherwise requires:

(1) Person with mental retardation means any person of subaverage general intellectual functioning which is associated with a significant impairment in adaptive behavior;

(2) Department means the Department of Health and Human Services or such person or agency within the Department of Health and Human Services as the chief executive officer of the department may designate; and

(3) Residential facility means an institution specified under section 83-217 to provide residential care by the State of Nebraska for persons with mental retardation.

Source: Laws 1969, c. 816, § 1, p. 3064; Laws 1986, LB 1177, § 47; Laws 1996, LB 1044, § 952; Laws 2007, LB296, § 798.
Operative date July 1, 2007.

83-382 Residential facilities; admission; department; jurisdiction. Except as provided in sections 79-1148 and 79-1149, the department shall have jurisdiction of the admission of persons with mental retardation to a residential facility. Applications for admission to a residential facility shall be filed with the department.

Source: Laws 1969, c. 816, § 2, p. 3064; Laws 1981, LB 499, § 42; Laws 1986, LB 1177, § 48; Laws 1987, LB 367, § 74; Laws 1996, LB 900, § 1067; Laws 1996, LB 1044, § 953; Laws 2007, LB296, § 799.
Operative date July 1, 2007.

83-383 Residential facilities; admission; application; by whom; appointment of guardian. (1) An application for admission shall be made in writing by one of the following persons:

(a) If the person applying for admission has a court-appointed guardian, the application shall be made by the guardian; and

(b) If the person applying for admission does not have a court-appointed guardian and has not reached the age of majority, as established by section 43-2101, as such section may from time to time be amended, the application shall be made by both parents if they are living together or by the parent having custody of such person if both parents are not then living or are not then living together.

(2) The county court of the county of residence of any person with mental retardation or the county court of the county in which a state residential facility is located shall have authority to appoint a guardian for any person with mental retardation upon the petition of the husband, wife, parent, person standing in loco parentis to such person, a county attorney, or any authorized official of the department. If the guardianship proceedings are initiated by an official of the department, the costs thereof may be taxed to and paid by the department if the person with mental retardation is without means to pay the costs. The department shall pay such costs upon presentation of a proper claim by the judge of the county court in which the proceedings were initiated. The costs of such proceedings shall include court costs, attorneys' fees, sheriffs' fees, psychiatric fees, and other necessary expenses of the guardianship.

Source: Laws 1969, c. 816, § 3, p. 3064; Laws 1982, LB 264, § 1; Laws 1986, LB 1177, § 49; Laws 1988, LB 790, § 36; Laws 1996, LB 1044, § 954; Laws 2007, LB296, § 800.
Operative date July 1, 2007.

83-384 Residential facilities; application for admission; contents. An application for admission to a residential facility shall contain the name, age, and place of residence of the person for whom admission is requested. The application shall set forth the name of the person submitting the application and the capacity in which he or she makes the application. The application shall contain authorization for the department to obtain all relevant medical records and information concerning the person for whom admission is requested.

Source: Laws 1969, c. 816, § 4, p. 3065; Laws 2007, LB296, § 801.
Operative date July 1, 2007.

83-385 Residential facilities; application for admission; referral; return of findings. Upon receipt of an application for admission, the department shall refer the person for whom admission is requested to an agency or person specially qualified in the diagnosis of mental or related conditions for examination and evaluation. Within fourteen days of referral, the agency or person making such examination and evaluation shall return the findings of the examination and evaluation to the department. The findings and evaluation may also include recommendations with respect to the placement of the person for whom admission is requested in a residential facility. The department may require further examination of the person for whom admission is requested.

Source: Laws 1969, c. 816, § 5, p. 3065; Laws 2007, LB296, § 802.
Operative date July 1, 2007.

83-386 Residential facilities; admission; selection by department; priority. The department shall examine all information concerning the person for whom admission is requested and shall determine therefrom whether the person is a person with mental retardation and whether residence in the residential facility is necessary for the welfare, care, treatment, or training of such person. Such determination shall be made in writing and shall set forth the reasons for the determination. If at any time it shall become necessary, for want of room or other cause, to discriminate in the admission of persons with mental retardation to residential facilities, the selection shall be made as follows: (1) Persons whose care is necessary in order to protect themselves or the public health and safety; (2) persons who are most likely to be benefited thereby; (3) persons shall next be admitted in the order in which their applications for admission have been filed with the department; and (4) when cases are equally meritorious in all other respects, an indigent person or a person from an indigent family shall be given preference.

Source: Laws 1969, c. 816, § 6, p. 3065; Laws 1986, LB 1177, § 50; Laws 2007, LB296, § 803.
Operative date July 1, 2007.

83-387 Residential facilities; patient; discharge or transfer; notice; responsibility of department. At such time as the department determines that continued residence in a residential facility will no longer benefit a person with mental retardation, the department shall arrange for the discharge or transfer of such person from the residential facility. The department shall give reasonable notice to the person authorized to make an application

for admission for such person under subsection (1) of section 83-383 that the department intends to discharge or transfer such person. The department shall also be responsible for the placement of such person in any other available program or facility and in the development of other methods for the care, treatment, and training of such person.

Source: Laws 1969, c. 816, § 7, p. 3066; Laws 1986, LB 1177, § 51; Laws 2007, LB296, § 804.
Operative date July 1, 2007.

83-390 Residential facilities; persons admitted; rights retained; rules and regulations. A person shall not lose his or her rights as a citizen, his or her property rights, or his or her legal capacity by reason of being admitted to a residential facility. The department may make reasonable rules and regulations concerning the exercise of such rights within the residential facility. Every person admitted to a residential facility under sections 83-217, 83-218, and 83-381 to 83-390 shall have an absolute right to communicate with the department, any court, a member of his or her family who does not file a written objection thereto with the department, a physician, or an attorney and to be visited at any reasonable hour by a physician or attorney. The department may make reasonable rules and regulations concerning communication by letter or otherwise with any other person or agency and concerning the right to receive other visitors.

Source: Laws 1969, c. 816, § 10, p. 3067; Laws 2007, LB296, § 805.
Operative date July 1, 2007.

ARTICLE 4

PENAL AND CORRECTIONAL INSTITUTIONS

(1) INCARCERATION WORK CAMPS

Section.

- 83-4,142. Department of Correctional Services; duties; legislative intent.
- 83-4,143. Eligibility for incarceration work camp; court or Board of Parole; considerations; duration.
- 83-4,144. Sentencing court; powers; release on parole.
- 83-4,145. Failure to complete program; effect.
- 83-4,146. Costs.

(1) INCARCERATION WORK CAMPS

83-4,142 Department of Correctional Services; duties; legislative intent. The Department of Correctional Services shall develop and implement an incarceration work camp, to be completed no later than January 1, 2005, for placement of felony offenders as a condition of a sentence of intensive supervision probation or as a transitional phase prior to release on parole. As part of the incarceration work camp, an intensive residential drug treatment program may be developed and implemented for felony offenders.

It is the intent of the Legislature that the incarceration work camp serve to reduce prison overcrowding and to make prison bed space available for violent offenders. It is the further intent of the Legislature that the incarceration work camp serve the interests of society by addressing the criminogenic needs of certain designated offenders and by deterring such offenders from engaging in further criminal activity. To accomplish these goals, the incarceration work camp shall provide regimented, structured, disciplined programming, including all of the following: Work programs; vocational training; behavior management and modification; money management; substance abuse awareness, counseling, and treatment; and education, programming needs, and aftercare planning, which will increase the offender's abilities to lead a law-abiding, productive, and fulfilling life as a contributing member of a free society.

Source: Laws 1997, LB 882, § 2; Laws 2005, LB 538, § 27; Laws 2007, LB83, § 1.
Effective date March 20, 2007.

83-4,143 Eligibility for incarceration work camp; court or Board of Parole; considerations; duration. (1) It is the intent of the Legislature that the court target the felony offender (a) who is eligible and by virtue of his or her criminogenic needs is suitable to be sentenced to intensive supervision probation with placement at the incarceration work camp, (b) for whom the court finds that other conditions of a sentence of intensive supervision probation, in and of themselves, are not suitable, and (c) who, without the existence of an incarceration work camp, would, in all likelihood, be sentenced to prison.

(2) When the court is of the opinion that imprisonment is appropriate, but that a brief and intensive period of regimented, structured, and disciplined programming within a secure facility may better serve the interests of society, the court may place an offender in an incarceration work camp for a period not to exceed one hundred eighty days as a condition of a sentence of intensive supervision probation. The court may consider such placement if the offender (a) is a male or female offender convicted of a felony offense in a district court, (b) is medically and mentally fit to participate, with allowances given for reasonable accommodation as determined by medical and mental health professionals, and (c) has not previously been incarcerated for a violent felony crime. Offenders convicted of a crime under sections 28-319 to 28-321 or of any capital crime are not eligible to be placed in an incarceration work camp.

(3) It is also the intent of the Legislature that the Board of Parole may recommend placement of felony offenders at the incarceration work camp. The offenders recommended by the board shall be offenders currently housed at other Department of Correctional Services adult correctional facilities and shall complete the incarceration work camp programming prior to release on parole.

(4) When the Board of Parole is of the opinion that a felony offender currently incarcerated in a Department of Correctional Services adult correctional facility may benefit from a brief and intensive period of regimented, structured, and disciplined programming immediately prior to release on parole, the board may direct placement of such an offender in an incarceration work camp for a period not to exceed one hundred eighty days as a condition

of release on parole. The board may consider such placement if the felony offender (a) is medically and mentally fit to participate, with allowances given for reasonable accommodation as determined by medical and mental health professionals, and (b) has not previously been incarcerated for a violent felony crime. Offenders convicted of a crime under sections 28-319 to 28-321 or of any capital crime are not eligible to be placed in an incarceration work camp.

Source: Laws 1997, LB 882, § 3; Laws 2000, LB 288, § 1; Laws 2005, LB 538, § 28; Laws 2006, LB 1199, § 104; Laws 2007, LB83, § 2.
Effective date March 20, 2007.

83-4,144 Sentencing court; powers; release on parole. Upon successful completion of the incarceration work camp program, as determined by the Department of Correctional Services, the sentencing court may modify the offender's conditions of his or her sentence of probation, place the offender in an aftercare program, or discharge the offender. An offender placed in an incarceration work camp pursuant to a recommendation of the Board of Parole shall be released on parole upon successful completion, as determined by the board, of the incarceration work camp program.

Source: Laws 1997, LB 882, § 4; Laws 2007, LB83, § 3.
Effective date March 20, 2007.

83-4,145 Failure to complete program; effect. If the offender for any reason fails to successfully complete the incarceration work camp program, the sentencing court may impose any other sentence that the court may have originally imposed. An offender placed at the incarceration work camp pursuant to a recommendation of the Board of Parole who fails to successfully complete the incarceration work camp program shall be returned to the board for a rescission hearing. Credit shall be given for time actually served in the incarceration work camp program.

Source: Laws 1997, LB 882, § 5; Laws 2007, LB83, § 4.
Effective date March 20, 2007.

83-4,146 Costs. All costs incurred during the period the offender is committed to an incarceration work camp shall be the responsibility of the state. Counties shall be liable for the cost of transporting the offender to the incarceration work camp and for returning the offender to the appropriate court for reimposition of sentence or such other disposition as the court may then deem appropriate only if the offender is discharged for unsatisfactory performance from the incarceration work camp, except that the state shall be liable for the cost of transporting the offender to the incarceration work camp when such placement was made pursuant to a recommendation by the Board of Parole and for returning the offender to the appropriate Department of Correctional Services adult correctional facility if the offender is discharged for unsatisfactory performance from the incarceration work camp.

Source: Laws 1997, LB 882, § 6; Laws 2003, LB 46, § 29; Laws 2007, LB83, § 5.
Effective date March 20, 2007.

ARTICLE 8

INTERSTATE COMPACT ON MENTAL HEALTH

Section.

83-802. Chief executive officer of Department of Health and Human Services; duties.

83-802 Chief executive officer of Department of Health and Human Services; duties. Pursuant to the compact as provided in section 83-801, the chief executive officer of the Department of Health and Human Services or such person as the chief executive officer may designate shall be the compact administrator and shall have the power to promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is hereby authorized, empowered, and directed to cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

Source: Laws 1969, c. 556, § 2, p. 2271; Laws 1996, LB 1044, § 957; Laws 2007, LB296, § 806.
Operative date July 1, 2007.

ARTICLE 9

DEPARTMENT OF CORRECTIONAL SERVICES

(a) GENERAL PROVISIONS

Section.

83-901. Sections; purpose.

83-916. Buildings; erection; repair and improvement; contracts; bidding; procedure; exceptions; bond.

(a) GENERAL PROVISIONS

83-901 Sections; purpose. The purpose of sections 49-617, 68-621, 72-249, 72-1302 to 72-1304, 81-101, 81-102, 81-1021, 83-101.08, 83-107.01, 83-108, 83-108.04, 83-112, 83-135, 83-139, 83-140, 83-144, 83-145, 83-147 to 83-150, 83-153 to 83-156, 83-170 to 83-173, 83-186, 83-188, 83-443, and 83-901 to 83-916 is to establish an agency of state government for the custody, study, care, discipline, training, and treatment of persons in the correctional and detention institutions and for the study, training, and treatment of persons under the supervision of other correctional services of the state so that they may be prepared for lawful community living. Correctional services shall be so diversified in program and personnel as to facilitate individualization of treatment.

Source: Laws 1973, LB 563, § 53; Laws 1996, LB 1044, § 958; Laws 1997, LB 307, § 228; Laws 1998, LB 1073, § 168; Laws 2007, LB256, § 14.
Effective date September 1, 2007.

Cross Reference

Department of Correctional Services, created, see sections 81-101 and 83-171.

Director of Correctional Services, appointment, salary, qualifications, see sections 81-102 and 83-172.

83-916 Buildings; erection; repair and improvement; contracts; bidding; procedure; exceptions; bond. (1) The Department of Correctional Services shall have general charge of the erection of new buildings, the repair and improvement of buildings, including fire escapes, and the improvement of grounds.

(2) Buildings and other improvements costing more than fifty thousand dollars, exclusive of equipment not germane to construction and building material made in the institution, shall be (a) constructed under the general charge of the department as provided in subsection (1) of this section and (b) let by contract to the lowest responsible bidder after proper advertisement as set forth in subsection (5) of this section, except that buildings costing more than fifty thousand dollars, such as shops, warehouses, or a cannery, when declared necessary by the department and to be constructed on the grounds of any Department of Correctional Services adult correctional facility, may be constructed by the use of inmate labor. Any construction by inmate labor shall have the approval of the department, the warden, and the chief engineer of the department.

(3) Inmate labor or the labor of state charges shall be employed, whenever the department deems it practicable, in all construction, repairs, and improvements at state institutions.

(4) The successful bidder at the letting referred to in subsection (2) of this section shall enter into a formal contract with the department, prepared as provided for by subsection (5) of this section, and shall furnish a bond for the faithful performance of his or her contract, except that a performance bond shall not be required for any project which has a total cost of one hundred thousand dollars or less unless the department includes a bond requirement in the specifications for the project.

(5) When contracts are to be let by the department as provided for by subsection (2) of this section, advertisements shall be published in accordance with rules and regulations adopted and promulgated by the state building division of the Department of Administrative Services stating that sealed proposals will be received by the Department of Correctional Services at its office on the date therein stated for the furnishing of materials, the construction of buildings, or the making of repairs or improvements and that plans and specifications can be seen at the office of the department. All bids or proposals shall be accompanied by a certified check or bid bond in a sum fixed by the department and payable thereto. All such contracts shall be awarded to the lowest responsible bidder, but the right shall be reserved to reject any and all bids. Whenever any material described in any contract can be obtained from any state institution, the department shall exclude it from such a contract.

Source: Laws 1973, LB 563, § 68; Laws 1990, LB 257, § 6; Laws 1993, LB 31, § 69; Laws 1995, LB 530, § 18; Laws 2007, LB256, § 15.
Effective date September 1, 2007.

ARTICLE 12

DEVELOPMENTAL DISABILITIES SERVICES

Section.

83-1204. Department, defined.

83-1206. Director, defined.

83-1216. Department; services; legislative intent.

83-1204 Department, defined. Department shall mean the Division of Developmental Disabilities of the Department of Health and Human Services.

Source: Laws 1991, LB 830, § 4; Laws 1996, LB 1044, § 971; Laws 2007, LB296, § 807.
Operative date July 1, 2007.

83-1206 Director, defined. Director shall mean the Director of Developmental Disabilities of the Division of Developmental Disabilities.

Source: Laws 1991, LB 830, § 6; Laws 1996, LB 1044, § 972; Laws 2007, LB296, § 808.
Operative date July 1, 2007.

83-1216 Department; services; legislative intent. (1) Beginning July 1, 1995, persons determined to be eligible for specialized services who on or after September 6, 1993, graduate from high school, reach the age of twenty-one years, or are currently receiving services shall receive services in accordance with the Developmental Disabilities Services Act. The amount of funding for any person receiving services shall be determined using an objective assessment process developed by the plan in subsection (3) of this section.

(2) The department shall provide directly or by contract service coordination to Nebraska residents found to be eligible for specialized services.

(3) It is the intent of the Legislature that by July 1, 2010, all persons determined to be eligible for services shall receive services in accordance with the act.

(4) It is the intent of the Legislature that the department take all possible steps to maximize funding in order to implement subsections (1) and (2) of this section prior to the date these subsections become entitlements. All Nebraska residents eligible for funding for specialized services under the Developmental Disabilities Services Act shall apply for and accept any federal medicaid benefits for which they may be eligible and benefits from other funding sources within the department, the State Department of Education, specifically including the Division of Rehabilitation Services, and other agencies to the maximum extent possible.

Source: Laws 1991, LB 830, § 16; Laws 1992, Third Spec. Sess., LB 4, § 1; Laws 1994, LB 1136, § 5; Laws 1996, LB 1044, § 975; Laws 2004, LB 297, § 3; Laws 2007, LB296, § 809.
Operative date July 1, 2007.

CHAPTER 84

STATE OFFICERS

Article.

2. Attorney General. 84-205, 84-221.
3. Auditor of Public Accounts. 84-304.
6. State Treasurer. 84-612, 84-613.
7. General Provisions as to State Officers. 84-712.05.
13. State Employees Retirement Act. 84-1309.02 to 84-1322.
14. Public Meetings. 84-1409, 84-1411.

ARTICLE 2

ATTORNEY GENERAL

Section.

- 84-205. Attorney General; powers and duties; Child Protection Division.
 84-221. Repealed. Laws 2007, LB 322, § 43.

84-205 Attorney General; powers and duties; Child Protection Division. The duties of the Attorney General shall be:

- (1) To appear and defend actions and claims against the state;
- (2) To investigate, commence, and prosecute any and all actions resulting from violations of sections 32-1401 to 32-1417;
- (3) To consult with and advise the county attorneys, when requested by them, in all criminal matters and in matters relating to the public revenue. He or she shall have authority to require aid and assistance of the county attorney in all matters pertaining to the duties of the Attorney General in the county of such county attorney and may, in any case brought to the Court of Appeals or Supreme Court from any county, demand and receive the assistance of the county attorney from whose county such case is brought;
- (4) To give, when required, without fee, his or her opinion in writing upon all questions of law submitted to him or her by the Governor, head of any executive department, Secretary of State, State Treasurer, Auditor of Public Accounts, Board of Educational Lands and Funds, State Department of Education, Public Service Commission, or Legislature;
- (5) At the request of the Governor, head of any executive department, Secretary of State, State Treasurer, Auditor of Public Accounts, Board of Educational Lands and Funds, State Department of Education, or Public Service Commission, to prosecute any official bond or any contract in which the state is interested which is deposited with any of them and to prosecute or defend for the state all civil or criminal actions and proceedings relating to any matter connected with any of such officers' departments if, after investigation, he or she is convinced there is sufficient legal merit to justify the proceeding. Such officers shall not pay or contract to pay from the funds of the state any money for special attorneys or

counselors-at-law unless the employment of such special counsel is made upon the written authorization of the Governor or the Attorney General;

(6) To enforce the proper application of money appropriated by the Legislature to the various funds of the state and prosecute breaches of trust in the administration of such funds;

(7) To prepare, when requested by the Governor, Secretary of State, State Treasurer, or Auditor of Public Accounts or any other executive department, proper drafts for contracts, forms, or other writings which may be wanted for the use of the state and report to the Legislature, whenever requested, upon any business pertaining to the duties of his or her office;

(8) To pay all money received, belonging to the people of the state, immediately upon receipt thereof, into the state treasury;

(9) To keep a record in proper books provided for that purpose at the expense of the state, a register of all actions and demands prosecuted or defended by him or her in behalf of the state and all proceedings had in relation thereto, and deliver the same to his or her successor in office;

(10) To appear for the state and prosecute and defend all civil or criminal actions and proceedings in the Court of Appeals or Supreme Court in which the state is interested or a party. When requested by the Governor or the Legislature, the Attorney General shall appear for the state and prosecute or defend any action or conduct any investigation in which the state is interested or a party before any court, officer, board, tribunal, or commission;

(11) To prepare and promulgate model rules of procedure appropriate for use by as many agencies as possible. The Attorney General shall add to, amend, or revise the model rules as necessary for the proper guidance of agencies;

(12) To include within the budget of the office sufficient funding to assure oversight and representation of the State of Nebraska for district court appeals of administrative license revocation proceedings under section 60-498.04; and

(13) To create a Child Protection Division to be staffed by at least three assistant attorneys general who each have five or more years of experience in the prosecution or defense of felonies or misdemeanors, including two years in the prosecution or defense of crimes against children. Upon the written request of a county attorney, the division shall provide consultation and advise and assist in the preparation of the trial of any case involving a crime against a child, including, but not limited to, the following offenses:

- (a) Murder as defined in sections 28-303 and 28-304;
- (b) Manslaughter as defined in section 28-305;
- (c) Kidnapping as defined in section 28-313;
- (d) False imprisonment as defined in sections 28-314 and 28-315;
- (e) Child abuse as defined in section 28-707;
- (f) Pandering as defined in section 28-802;
- (g) Debauching a minor as defined in section 28-805; and
- (h) Offenses listed in sections 28-813, 28-813.01, and 28-1463.03.

Any offense listed in subdivisions (a) through (h) of this subdivision shall include all inchoate offenses pursuant to the Nebraska Criminal Code and compounding a felony pursuant to section 28-301. Such crimes shall not include matters involving dependent and neglected children, infraction violations, custody, parenting time, visitation, or other access matters, or child support. If the county attorney declines in writing to prosecute a case involving a crime against a child because of an ethical consideration, including the presence or appearance of a conflict of interest, or for any other reason, the division shall, upon the receipt of a written request of the county attorney, the Department of Health and Human Services, the minor child, the parents of the minor child, or any other interested party, investigate the matter and either decline to prosecute the matter or initiate the appropriate criminal proceedings in a court of proper jurisdiction.

For purposes of this subdivision, child or children shall mean an individual or individuals sixteen years of age or younger.

Source: Laws 1919, c. 205, § 5, p. 905; C.S.1922, § 4838; C.S.1929, § 84-205; R.S.1943, § 84-205; Laws 1972, LB 1456, § 4; Laws 1973, LB 14, § 2; Laws 1990, LB 1246, § 17; Laws 1991, LB 732, § 157; Laws 1994, LB 446, § 13; Laws 1996, LB 1044, § 977; Laws 1997, LB 758, § 6; Laws 2003, LB 209, § 18; Laws 2007, LB554, § 45.
Operative date January 1, 2008.

Cross Reference

Nebraska Criminal Code, see section 28-101.

84-221 Repealed. Laws 2007, LB 322, § 43.

ARTICLE 3

AUDITOR OF PUBLIC ACCOUNTS

Section.

84-304. Auditor; powers and duties; assistant deputies; qualifications; duties.

84-304 Auditor; powers and duties; assistant deputies; qualifications; duties. It shall be the duty of the Auditor of Public Accounts:

(1) To give information in writing to the Legislature, whenever required, upon any subject relating to the fiscal affairs of the state or with regard to any duty of his or her office;

(2) To furnish offices for himself or herself and all fuel, lights, books, blanks, forms, paper, and stationery required for the proper discharge of the duties of his or her office;

(3) To examine or cause to be examined, at such time as he or she shall determine, books, accounts, vouchers, records, and expenditures of all state officers, state bureaus, state boards, state commissioners, the state library, societies and associations supported by the state, state institutions, state colleges, and the University of Nebraska, except when required to be performed by other officers or persons. Such examinations shall be done in accordance with generally accepted government auditing standards for financial audits and attestation engagements set forth in Government Auditing Standards (2003 Revision), published by the Comptroller General of the United States, General Accounting Office, and

except as provided in subdivision (12) of this section, subdivision (16) of section 50-1205, and section 84-322, shall not include performance audits, whether conducted pursuant to attestation engagements or performance audit standards as set forth in Government Auditing Standards (2003 Revision), published by the Comptroller General of the United States, General Accounting Office;

(4)(a) To examine or cause to be examined, at the expense of the political subdivision, when the Auditor of Public Accounts determines such examination necessary or when requested by the political subdivision, the books, accounts, vouchers, records, and expenditures of any agricultural association formed under Chapter 2, article 20, any county agricultural society, any joint airport authority formed under the Joint Airport Authorities Act, any city or county airport authority, any bridge commission created pursuant to section 39-868, any cemetery district, any development district, any drainage district, any health district, any local public health department as defined in section 71-1626, any historical society, any hospital authority or district, any county hospital, any housing agency as defined in section 71-1575, any irrigation district, any county or municipal library, any community mental health center, any railroad transportation safety district, any rural water district, any township, Wyuka Cemetery, the Educational Service Unit Coordinating Council, any entity created pursuant to the Interlocal Cooperation Act which includes either the participation of the Educational Service Unit Coordinating Council or any educational service unit, any village, any political subdivision with the authority to levy a property tax or a toll, or any entity created pursuant to the Joint Public Agency Act which has separately levied a property tax based on legal authority for a joint public agency to levy such a tax independent of the public agencies forming such joint public agency.

(b) The Auditor of Public Accounts may waive the audit requirement of subdivision (4)(a) of this section upon the submission by the political subdivision of a written request in a form prescribed by the auditor. The auditor shall notify the political subdivision in writing of the approval or denial of the request for a waiver;

(5) To report promptly to the Governor and the appropriate standing committee of the Legislature the fiscal condition shown by such examinations conducted by the auditor, including any irregularities or misconduct of officers or employees, any misappropriation or misuse of public funds or property, and any improper system or method of bookkeeping or condition of accounts. In addition, if, in the normal course of conducting an audit in accordance with subdivision (3) of this section, the auditor discovers any potential problems related to the effectiveness, efficiency, or performance of state programs, he or she shall immediately report them in writing to the Legislative Performance Audit Committee which may investigate the issue further, report it to the appropriate standing committee of the Legislature, or both;

(6)(a) To examine or cause to be examined the books, accounts, vouchers, records, and expenditures of a fire protection district. The expense of the examination shall be paid by the political subdivision.

(b) Whenever the expenditures of a fire protection district are one hundred fifty thousand dollars or less per fiscal year, the fire protection district shall be audited no more than once every five years except as directed by the board of directors of the fire protection district or unless the auditor receives a verifiable report from a third party indicating any irregularities or misconduct of officers or employees of the fire protection district, any misappropriation or misuse of public funds or property, or any improper system or method of bookkeeping or condition of accounts of the fire protection district. In the absence of such a report, the auditor may waive the five-year audit requirement upon the submission of a written request by the fire protection district in a form prescribed by the auditor. The auditor shall notify the fire protection district in writing of the approval or denial of a request for waiver of the five-year audit requirement. Upon approval of the request for waiver of the five-year audit requirement, a new five-year audit period shall begin.

(c) Whenever the expenditures of a fire protection district exceed one hundred fifty thousand dollars in a fiscal year, the auditor may waive the audit requirement upon the submission of a written request by the fire protection district in a form prescribed by the auditor. The auditor shall notify the fire protection district in writing of the approval or denial of a request for waiver. Upon approval of the request for waiver, a new five-year audit period shall begin for the fire protection district if its expenditures are one hundred fifty thousand dollars or less per fiscal year in subsequent years;

(7) To appoint two assistant deputies (a) whose entire time shall be devoted to the service of the state as directed by the auditor, (b) who shall be certified public accountants with at least five years' experience, (c) who shall be selected without regard to party affiliation or to place of residence at the time of appointment, (d) who shall promptly report in duplicate to the auditor the fiscal condition shown by each examination, including any irregularities or misconduct of officers or employees, any misappropriation or misuse of public funds or property, and any improper system or method of bookkeeping or condition of accounts, and it shall be the duty of the auditor to file promptly with the Governor a duplicate of such report, and (e) who shall qualify by taking an oath which shall be filed in the office of the Secretary of State;

(8) To conduct audits and related activities for state agencies, political subdivisions of this state, or grantees of federal funds disbursed by a receiving agency on a contractual or other basis for reimbursement to assure proper accounting by all such agencies, political subdivisions, and grantees for funds appropriated by the Legislature and federal funds disbursed by any receiving agency. The auditor may contract with any political subdivision to perform the audit of such political subdivision required by or provided for in section 23-1608 or 79-1229 or this section and charge the political subdivision for conducting the audit. The fees charged by the auditor for conducting audits on a contractual basis shall be in an amount sufficient to pay the cost of the audit. The fees remitted to the auditor for such audits and services shall be deposited in the Auditor of Public Accounts Cash Fund;

(9) To conduct all audits and examinations in a timely manner and in accordance with the standards for audits of governmental organizations, programs, activities, and functions published by the Comptroller General of the United States;

(10) To develop a plan for implementing on-line filing of budgeted and actual financial information by political subdivisions. Such plan shall describe the technology and staff resources necessary to implement on-line filing of such information and the costs of these resources. Such plan shall be presented to the Clerk of the Legislature on or before January 15, 2003;

(11) To develop and maintain an annual budget and actual financial information reporting system that is accessible on-line by the public; and

(12) When authorized, to conduct joint audits with the Legislative Performance Audit Committee as described in section 50-1205.

Source: R.S.1866, c. 4, § 4, p. 20; Laws 1907, c. 140, § 1, p. 447; R.S.1913, § 5546; C.S.1922, § 4848; C.S.1929, § 84-304; Laws 1939, c. 28, § 4, p. 142; C.S.Supp.,1941, § 84-304; R.S.1943, § 84-304; Laws 1951, c. 339, § 1, p. 1121; Laws 1953, c. 322, § 2, p. 1065; Laws 1965, c. 538, § 30, p. 1715; Laws 1965, c. 459, § 26, p. 1465; Laws 1967, c. 36, § 8, p. 164; Laws 1974, LB 280, § 3; Laws 1976, LB 759, § 2; Laws 1977, LB 193, § 4; Laws 1979, LB 414, § 5; Laws 1984, LB 473, § 25; Laws 1985, Second Spec. Sess., LB 29, § 5; Laws 1987, LB 183, § 6; Laws 1992, LB 573, § 14; Laws 1993, LB 579, § 4; Laws 1993, LB 516, § 4; Laws 1995, LB 205, § 1; Laws 1995, LB 509, § 1; Laws 1995, LB 572, § 1; Laws 1996, LB 900, § 1069; Laws 1997, LB 250, § 24; Laws 2000, LB 968, § 84; Laws 2000, LB 1304, § 1; Laws 2002, LB 568, § 11; Laws 2003, LB 607, § 20; Laws 2004, LB 1005, § 136; Laws 2004, LB 1118, § 3; Laws 2006, LB 588, § 10; Laws 2007, LB603, § 31.
Operative date July 1, 2008.

Cross Reference

Interlocal Cooperation Act, see section 13-801.
Joint Airport Authorities Act, see section 3-716.
Joint Public Agency Act, see section 13-2501.
Successors, duties relating to, see section 84-604.
Tax returns, audited when, see section 77-27,119.

ARTICLE 6

STATE TREASURER

Section.

84-612. Cash Reserve Fund; created; transfers; receipt of federal funds.

84-613. Cash Reserve Fund; investment; interest; disposition.

84-612 Cash Reserve Fund; created; transfers; receipt of federal funds. (1) There is hereby created within the state treasury a fund known as the Cash Reserve Fund which shall be under the direction of the State Treasurer. The fund shall only be used pursuant to this section.

(2) The State Treasurer shall transfer funds from the Cash Reserve Fund to the General Fund upon certification by the Director of Administrative Services that the current cash balance in the General Fund is inadequate to meet current obligations. Such certification shall include

the dollar amount to be transferred. Any transfers made pursuant to this subsection shall be reversed upon notification by the Director of Administrative Services that sufficient funds are available.

(3) The State Treasurer, at the direction of the budget administrator of the budget division of the Department of Administrative Services, shall transfer such amounts not to exceed seven million seven hundred fifty-three thousand two hundred sixty-three dollars in total from the Cash Reserve Fund to the Nebraska Capital Construction Fund between July 1, 2003, and June 30, 2007.

(4) The State Treasurer, at the direction of the budget administrator, shall transfer an amount equal to the total amount transferred pursuant to subsection (3) of this section from the General Fund to the Cash Reserve Fund on or before June 30, 2008.

(5) In addition to receiving transfers from other funds, the Cash Reserve Fund shall receive federal funds received by the State of Nebraska for undesignated general government purposes, federal revenue sharing, or general fiscal relief of the state.

(6) On June 15, 2007, the State Treasurer shall transfer fifteen million six hundred seventy-four thousand one hundred seven dollars from the Cash Reserve Fund to the General Fund.

(7) On June 16, 2008, the State Treasurer shall transfer seventeen million nine hundred thirty-one thousand thirty dollars from the Cash Reserve Fund to the General Fund.

(8) On June 15, 2009, the State Treasurer shall transfer four million nine hundred ninety thousand five hundred five dollars from the Cash Reserve Fund to the General Fund.

(9) On or before June 16, 2008, the State Treasurer, at the direction of the budget administrator, shall transfer fifty million dollars from the Cash Reserve Fund to the General Fund.

(10) On or before June 16, 2009, the State Treasurer, at the direction of the budget administrator, shall transfer fifty million dollars from the Cash Reserve Fund to the General Fund.

(11) From the effective date of an endowment agreement as defined in subdivision (3)(c) of section 79-1101 until June 30, 2007, forty million dollars of the Cash Reserve Fund shall be deemed to constitute the Early Childhood Education Endowment Fund. Such funds shall remain part of the Cash Reserve Fund for all purposes, except that the interest earned on such forty million dollars shall accrue as provided in section 84-613.

(12) The State Treasurer, at the direction of the budget administrator, shall transfer such amounts, as certified by the Director of Administrative Services, for employee health insurance claims and expenses, not to exceed twelve million dollars in total from the Cash Reserve Fund to the State Employees Insurance Fund between May 1, 2007, and June 30, 2011.

(13) On July 9, 2007, the State Treasurer shall transfer twelve million dollars from the Cash Reserve Fund to the Nebraska Capital Construction Fund.

(14) On July 9, 2007, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Job Training Cash Fund. The State Treasurer shall transfer from the Job Training Cash Fund to the Cash Reserve Fund such amounts as directed in section 81-1201.21.

(15) On July 7, 2008, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Job Training Cash Fund. The State Treasurer shall transfer from the Job Training Cash Fund to the Cash Reserve Fund such amounts as directed in section 81-1201.21.

(16) On or before August 1, 2007, the State Treasurer, at the direction of the budget administrator, shall transfer seventy-five million dollars from the Cash Reserve Fund to the Nebraska Capital Construction Fund.

(17) On or before June 30, 2009, the State Treasurer shall transfer nine million five hundred ninety thousand dollars from the Cash Reserve Fund to the Nebraska Capital Construction Fund.

(18) The State Treasurer, at the direction of the budget administrator, shall transfer an amount equal to the total amount transferred pursuant to subsection (12) of this section from the appropriate health insurance accounts of the State Employees Insurance Fund in such amounts as certified by the Director of Administrative Services to the Cash Reserve Fund on or before June 30, 2011.

(19) On July 9, 2007, the State Treasurer shall transfer one million dollars from the Cash Reserve Fund to the Microenterprise Development Cash Fund.

(20) On July 9, 2007, the State Treasurer shall transfer two hundred fifty thousand dollars from the Cash Reserve Fund to the Building Entrepreneurial Communities Cash Fund.

(21) On July 7, 2008, the State Treasurer shall transfer one million dollars from the Cash Reserve Fund to the Microenterprise Development Cash Fund.

(22) On July 7, 2008, the State Treasurer shall transfer two hundred fifty thousand dollars from the Cash Reserve Fund to the Building Entrepreneurial Communities Cash Fund.

Source: Laws 1983, LB 59, § 5; Laws 1985, LB 713, § 2; Laws 1985, LB 501, § 2; Laws 1986, LB 739, § 1; Laws 1986, LB 870, § 1; Laws 1987, LB 131, § 1; Laws 1988, LB 1091, § 4; Laws 1989, LB 310, § 1; Laws 1991, LB 857, § 1; Laws 1991, LB 783, § 33; Laws 1992, LB 1268, § 1; Laws 1993, LB 38, § 4; Laws 1994, LB 1045, § 1; Laws 1996, LB 1290, § 6; Laws 1997, LB 401, § 5; Laws 1998, LB 63, § 1; Laws 1998, LB 988, § 1; Laws 1998, LB 1104, § 30; Laws 1998, LB 1134, § 5; Laws 1998, LB 1219, § 23; Laws 1999, LB 881, § 9; Laws 2000, LB 1214, § 2; Laws 2001, LB 541, § 6; Laws 2002, LB 1310, § 20; Laws 2003, LB 790, § 74; Laws 2003, LB 798, § 1; Laws 2004, LB 1090, § 2; Laws 2005, LB 427, § 2; Laws 2006, LB 1131, § 1; Laws 2006, LB 1256, § 9; Laws 2007, LB323, § 3.
Operative date May 22, 2007.

84-613 Cash Reserve Fund; investment; interest; disposition. Any money in the Cash Reserve 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. Until July 1, 2007, any interest earned by the fund shall accrue to the General Fund, except for interest earned on forty million dollars if such money is deemed to constitute the Early Childhood Education Endowment Fund in accordance with subsection (11) of section 84-612. From the effective date of an endowment agreement as defined in subdivision (3)(c)

of section 79-1101 until June 30, 2007, interest earned on the forty million dollars deemed to constitute the Early Childhood Education Endowment Fund shall accrue to the Early Childhood Education Endowment Cash Fund. Commencing July 1, 2007, any interest earned by the Cash Reserve Fund shall accrue to the General Fund.

Source: Laws 1983, LB 59, § 6; Laws 1986, LB 870, § 2; Laws 1987, LB 131, § 2; Laws 1988, LB 391, § 1; Laws 1995, LB 7, § 147; Laws 2004, LB 1090, § 3; Laws 2006, LB 1131, § 2; Laws 2006, LB 1256, § 10; Laws 2007, LB323, § 4.
Operative date July 1, 2007.

Cross Reference

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

ARTICLE 7

GENERAL PROVISIONS AS TO STATE OFFICERS

Section.

84-712.05. Records which may be withheld from the public; enumerated.

84-712.05 Records which may be withheld from the public; enumerated. The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

(1) Personal information in records regarding a student, prospective student, or former student of any educational institution or exempt school that has effectuated an election not to meet state approval or accreditation requirements pursuant to section 79-1601 when such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public consistent with 20 U.S.C. 1232g, as such section existed on January 1, 2003;

(2) Medical records, other than records of births and deaths and except as provided in subdivision (5) of this section, in any form concerning any person; records of elections filed under section 44-2821; and patient safety work product under the Patient Safety Improvement Act;

(3) Trade secrets, academic and scientific research work which is in progress and unpublished, and other proprietary or commercial information which if released would give advantage to business competitors and serve no public purpose;

(4) Records which represent the work product of an attorney and the public body involved which are related to preparation for litigation, labor negotiations, or claims made by or against the public body or which are confidential communications as defined in section 27-503;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, when the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information

used in law enforcement training, except that this subdivision shall not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person;

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property, prior to completion of the purchase or sale;

(7) Personal information in records regarding personnel of public bodies other than salaries and routine directory information;

(8) Information solely pertaining to protection of the security of public property and persons on or within public property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; or lock combinations;

(9) The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Lottery Division of the Department of Revenue and those persons or entities with which the division has entered into contractual relationships. Nothing in this subdivision shall allow the division to withhold from the public any information relating to amounts paid persons or entities with which the division has entered into contractual relationships, amounts of prizes paid, the name of the prize winner, and the city, village, or county where the prize winner resides;

(10) With respect to public utilities and except as provided in sections 43-512.06 and 70-101, personally identified private citizen account payment information, credit information on others supplied in confidence, and customer lists;

(11) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

(12) Correspondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature in whatever form. The lawful custodian of the correspondence, memoranda, and records of telephone calls, upon approval of the Executive Board of the Legislative Council, shall release the correspondence, memoranda, and records of telephone calls which are not designated as sensitive or confidential in nature to any person performing an audit of the Legislature. A member's correspondence, memoranda, and records of confidential telephone calls related to the performance of his or her legislative duties shall only be released to any other person with the explicit approval of the member;

(13) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in Nebraska when necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. This section shall not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by

recognized tribes, the Unmarked Human Burial Sites and Skeletal Remains Protection Act, or the federal Native American Graves Protection and Repatriation Act;

(14) Records or portions of records kept by public bodies which maintain collections of archaeological, historical, or paleontological significance which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the Unmarked Human Burial Sites and Skeletal Remains Protection Act or the federal Native American Graves Protection and Repatriation Act;

(15) Job application materials submitted by applicants, other than finalists, who have applied for employment by any public body as defined in section 84-1409. For purposes of this subdivision, (a) job application materials means employment applications, resumes, reference letters, and school transcripts and (b) finalist means any applicant (i) who reaches the final pool of applicants, numbering four or more, from which the successful applicant is to be selected, (ii) who is an original applicant when the final pool of applicants numbers less than four, or (iii) who is an original applicant and there are four or fewer original applicants; and

(16) Social security numbers; credit card, charge card, or debit card numbers and expiration dates; and financial account numbers supplied to state and local governments by citizens.

Source: Laws 1979, LB 86, § 5; Laws 1983, LB 108, § 1; Laws 1983, LB 565, § 1; Laws 1993, LB 579, § 6; Laws 1993, LB 590, § 6; Laws 1993, LB 719, § 2; Laws 1994, LB 1061, § 7; Laws 1994, LB 1224, § 88; Laws 1995, LB 343, § 7; Laws 1995, LB 509, § 6; Laws 1999, LB 137, § 1; Laws 2002, LB 276, § 7; Laws 2004, LB 236, § 1; Laws 2004, LB 868, § 3; Laws 2005, LB 361, § 37; Laws 2007, LB389, § 1.
Effective date April 3, 2007.

Cross Reference

Patient Safety Improvement Act, see section 71-8701.

Unmarked Human Burial Sites and Skeletal Remains Protection Act, see section 12-1201.

ARTICLE 13

STATE EMPLOYEES RETIREMENT ACT

Section.

- 84-1309.02. Cash balance benefit; election; effect; administrative services agreements; authorized.
- 84-1314. State Employees Defined Contribution Retirement Expense Fund; State Employees Cash Balance Retirement Expense Fund; created; use; investment.
- 84-1319. Future service retirement benefits; when payable; how computed; selection of annuity; board; provide tax information; deferment of benefits.
- 84-1321.01. Termination of employment; account forfeited; when; State Employer Retirement Expense Fund; created; investment.
- 84-1322. Employees; reemployment; status; how treated.

84-1309.02 Cash balance benefit; election; effect; administrative services agreements; authorized. (1) It is the intent of the Legislature that, in order to improve the competitiveness of the retirement plan for state employees, a cash balance benefit shall be added to the State Employees Retirement Act on and after January 1, 2003. Each member

who is employed and participating in the retirement system prior to January 1, 2003, may either elect to continue participation in the defined contribution benefit as provided in the act prior to January 1, 2003, or elect to participate in the cash balance benefit as set forth in this section. The member shall make the election prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008. If no election is made prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008, the member shall be treated as though he or she elected to continue participating in the defined contribution benefit as provided in the act prior to January 1, 2003. Members who elect to participate in the cash balance benefit on or after November 1, 2007, but before January 1, 2008, shall commence participation in the cash balance benefit on January 1, 2008. Any member who made the election prior to January 1, 2003, does not have to reelect the cash balance benefit on or after November 1, 2007, but before January 1, 2008.

(2) For a member employed and participating in the retirement system beginning on and after January 1, 2003, or a member employed and participating in the retirement system on January 1, 2003, who, prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008, elects to convert his or her employee and employer accounts to the cash balance benefit:

(a) The employee cash balance account shall, at any time, be equal to the following:

(i) The initial employee account balance, if any, transferred from the defined contribution plan account described in section 84-1310; plus

(ii) Employee contribution credits deposited in accordance with section 84-1308; plus

(iii) Interest credits credited in accordance with subdivision (18) of section 84-1301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319; and

(b) The employer cash balance account shall, at any time, be equal to the following:

(i) The initial employer account balance, if any, transferred from the defined contribution plan account described in section 84-1311; plus

(ii) Employer contribution credits deposited in accordance with section 84-1309; plus

(iii) Interest credits credited in accordance with subdivision (18) of section 84-1301; plus

(iv) Dividend amounts credited in accordance with subdivision (4)(c) of section 84-1319.

(3) In order to carry out the provisions of 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 state and its participating employees. The board may develop a schedule for the allocation of the administrative services agreements costs for accounting or record-keeping services and may assess the costs so that each member pays a reasonable fee as determined by the board. The money forfeited pursuant to section 84-1321.01 shall not be used to pay the administrative costs incurred pursuant to this subsection.

Source: Laws 2002, LB 687, § 21; Laws 2003, LB 451, § 25; Laws 2005, LB 364, § 17; Laws 2006, LB 366, § 10; Laws 2006, LB 1019, § 16; Laws 2007, LB328, § 7.
Operative date September 1, 2007.

84-1314 State Employees Defined Contribution Retirement Expense Fund; State Employees Cash Balance Retirement Expense Fund; created; use; investment. (1) The State Employees Defined Contribution Retirement Expense Fund is created. The fund shall be credited with money forfeited pursuant to section 84-1321.01 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 State Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 84-1309.02, 84-1310.01, 84-1311, and 84-1311.03. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The State Employees Cash Balance Retirement Expense Fund is created. The fund shall be credited with money forfeited pursuant to section 84-1321.01 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 State Employees Retirement Act and necessary in connection with the administration and operation of the retirement system, except as provided in sections 84-1309.02, 84-1310.01, 84-1311, and 84-1311.03. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1997, LB 623, § 40; Laws 2000, LB 1200, § 7; Laws 2001, LB 408, § 28; Laws 2003, LB 451, § 26; Laws 2005, LB 364, § 18; Laws 2007, LB328, § 8.
Operative date September 1, 2007.

Cross Reference

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

84-1319 Future service retirement benefits; when payable; how computed; selection of annuity; board; provide tax information; deferment of benefits. (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 84-1318 based on factors determined by the board, except that gender shall not be a factor when determining the amount of such payments except as provided in 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 acceptable 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 84-1318 except as provided in this section.

The board shall provide to any state 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 annuity 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 amounts, 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 State 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 84-1309.02, 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 prior to January 1, 2003, or on or after November 1, 2007, but before January 1, 2008, pursuant to section 84-1309.02, 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 Benefits Guarantee 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 State 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 84-1320 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 state. Such election by the retiring member may be made at any time prior to the commencement of the lump-sum or annuity payments.

Source: Laws 1963, c. 532, § 19, p. 1674; Laws 1973, LB 498, § 5; Laws 1983, LB 210, § 2; Laws 1984, LB 751, § 7; Laws 1986, LB 325, § 18; Laws 1986, LB 311, § 33; Laws 1987, LB 308, § 1; Laws 1987, LB 60, § 4; Laws 1991, LB 549, § 70; Laws 1992, LB 543, § 2; Laws 1994, LB 1306, § 8; Laws 1996, LB 1273, § 31; Laws 2002, LB 687, § 27; Laws 2003, LB 451, § 29; Laws 2006, LB 1019, § 17; Laws 2007, LB328, § 9.
Operative date September 1, 2007.

84-1321.01 Termination of employment; account forfeited; when; State Employer Retirement Expense Fund; created; 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 State 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 State Employees Defined Contribution Retirement Expense Fund, if the member participated in the defined contribution option, or to the State 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 reduce the state contribution which would otherwise be required to fund future service retirement benefits or to restore employer accounts or employer cash balance accounts. No forfeited amounts shall be applied to increase the benefits any member would otherwise receive under the State Employees Retirement Act.

(2) If a member ceases to be an employee due to the termination of his or her employment by the state 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 shall be suspended pending the final outcome of the grievance or other appeal.

(3) The State Employer Retirement Expense Fund is created. The fund shall be administered by the Public Employees Retirement Board. The fund shall be established and maintained separate from any funds held in trust for the benefit of members under the retirement system. The director of the Nebraska Public Employees Retirement Systems shall certify to the Accounting Administrator of the Department of Administrative Services when accumulated employer account forfeiture funds are available to reduce the state 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. Following such certification, the Accounting Administrator shall transfer the amount reduced from the state contribution from the Imprest Payroll Distributive Fund to the State Employer Retirement Expense Fund. Expenses incurred as a result of the state depositing amounts into the State Employer Retirement Expense Fund shall be deducted prior to any additional expenses being allocated. Any remaining amount shall be allocated in accordance with section 23-2319.02. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1997, LB 624, § 40; Laws 2000, LB 1200, § 8; Laws 2002, LB 687, § 29; Laws 2003, LB 451, § 32; Laws 2005, LB 364, § 19; Laws 2007, LB328, § 10.
Operative date September 1, 2007.

Cross Reference

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

84-1322 Employees; reemployment; status; how treated. (1) Except as otherwise provided in this section, a member of the retirement system who has a five-year break in service shall upon reemployment be considered a new employee with respect to the State Employees Retirement Act and shall not receive credit for service prior to his or her reemployment date.

(2)(a) A member who ceases to be an employee before becoming eligible for retirement under section 84-1317 and again becomes a permanent full-time or permanent part-time state employee prior to having a five-year break in service shall immediately be reenrolled in the retirement system and resume making contributions under rules and regulations established by the board. For purposes of vesting employer contributions made prior to and after reentry into the retirement system under subsection (3) of section 84-1321, years of participation include years of participation prior to such employee's original termination. For a member who is not vested and has received a termination benefit pursuant to section 84-1321, the years of participation prior to such employee's original termination shall be limited in a ratio equal to the amount that the member repays divided by the termination benefit withdrawn pursuant to section 84-1321. This subsection shall apply whether or not the person was a state employee on April 20, 1986, or July 17, 1986.

(b) The reemployed member may repay the value of, or a portion of the value of, the termination benefit withdrawn pursuant to section 84-1321. A reemployed member who elects to repay all or a portion of the value of the termination benefit withdrawn pursuant to section 84-1321 shall repay the actual earnings on such value. Repayment of the termination benefit shall commence within three years after reemployment and shall be completed within five years after reemployment or prior to termination of employment, whichever occurs first, through (i) direct payments to the retirement system, (ii) installment payments made pursuant to a binding irrevocable payroll deduction authorization made by the member, (iii) an eligible

rollover distribution as provided under the Internal Revenue Code, or (iv) a direct rollover distribution made in accordance with section 401(a)(31) of the Internal Revenue Code.

(c) The value of the member's forfeited employer account or employer cash balance account, as of the date of forfeiture, shall be restored in a ratio equal to the amount of the benefit that the member has repaid divided by the termination benefit received. The employer account or employer cash balance account shall be restored first out of the current forfeiture amounts and then by additional employer contributions.

(3) For a member who retired pursuant to section 84-1317 and becomes a permanent full-time employee or permanent part-time employee with the state more than one hundred twenty days after his or her retirement date, the member shall continue receiving retirement benefits. Such a retired member or a retired member who received a lump-sum distribution of his or her benefit shall be considered a new employee as of the date of reemployment and shall not receive credit for any service prior to the member's retirement for purposes of the act.

(4) A member who is reinstated as an employee pursuant to a grievance or appeal of his or her termination by the state shall be a member upon reemployment and shall not be considered to have a break in service for such period of time that the grievance or appeal was pending.

Source: Laws 1963, c. 532, § 22, p. 1676; Laws 1986, LB 325, § 21; Laws 1986, LB 311, § 36; Laws 1991, LB 549, § 72; Laws 1997, LB 624, § 41; Laws 1999, LB 703, § 24; Laws 2002, LB 407, § 60; Laws 2002, LB 687, § 30; Laws 2003, LB 451, § 33; Laws 2004, LB 1097, § 35; Laws 2007, LB328, § 11. Operative date September 1, 2007.

ARTICLE 14

PUBLIC MEETINGS

Section.

84-1409. Terms, defined.

84-1411. Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body.

84-1409 Terms, defined. For purposes of the Open Meetings Act, unless the context otherwise requires:

(1)(a) Public body means (i) governing bodies of all political subdivisions of the State of Nebraska, (ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (iv) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence, (v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions; and

(b) Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body, and (ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders;

(2) Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body; and

(3) Videoconferencing means conducting a meeting involving participants at two or more locations through the use of audio-video equipment which allows participants at each location to hear and see each meeting participant at each other location, including public input. Interaction between meeting participants shall be possible at all meeting locations.

Source: Laws 1975, LB 325, § 2; Laws 1983, LB 43, § 1; Laws 1989, LB 429, § 42; Laws 1989, LB 311, § 14; Laws 1992, LB 1019, § 124; Laws 1993, LB 635, § 1; Laws 1996, LB 1044, § 978; Laws 1997, LB 798, § 37; Laws 2004, LB 821, § 36; Laws 2007, LB296, § 810.
Operative date July 1, 2007.

84-1411 Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body. (1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) A meeting of a state agency, state board, state commission, state council, or state committee, of an advisory committee of any such state entity, of an organization created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a public power district having a chartered territory of more than fifty counties in this state, or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by means of videoconferencing or, in the case of the Judicial Resources Commission in those cases specified in section 24-1204, by telephone conference, if:

(a) Reasonable advance publicized notice is given;

(b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if videoconferencing or telephone conferencing was not used;

(c) At least one copy of all documents being considered is available to the public at each site of the videoconference or telephone conference;

(d) At least one member of the state entity, advisory committee, or governing body is present at each site of the videoconference or telephone conference; and

(e) No more than one-half of the state entity's, advisory committee's, or governing body's meetings in a calendar year are held by videoconference or telephone conference.

Videoconferencing, telephone conferencing, or conferencing by other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(3) A meeting of the governing body of an entity formed under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act or of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act may be held by telephone conference call if:

(a) The territory represented by the member public agencies of the entity or pool covers more than one county;

(b) Reasonable advance publicized notice is given which identifies each telephone conference location at which a member of the entity's or pool's governing body will be present;

(c) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the entity or pool or at a place which will accommodate the anticipated audience;

(d) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if a telephone conference call was not used;

(e) At least one copy of all documents being considered is available to the public at each site of the telephone conference call;

(f) At least one member of the governing body of the entity or pool is present at each site of the telephone conference call identified in the public notice;

(g) The telephone conference call lasts no more than one hour; and

(h) No more than one-half of the entity's or pool's meetings in a calendar year are held by telephone conference call.

Nothing in this subsection shall prevent the participation of consultants, members of the press, and other nonmembers of the governing body at sites not identified in the public notice. Telephone conference calls, emails, faxes, or other electronic communication shall not be

used to circumvent any of the public government purposes established in the Open Meetings Act.

(4) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(5) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(6) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

Source: Laws 1975, LB 325, § 4; Laws 1983, LB 43, § 3; Laws 1987, LB 663, § 25; Laws 1993, LB 635, § 2; Laws 1996, LB 469, § 6; Laws 1996, LB 1161, § 1; Laws 1999, LB 47, § 2; Laws 1999, LB 87, § 100; Laws 1999, LB 461, § 1; Laws 2000, LB 968, § 85; Laws 2004, LB 821, § 38; Laws 2004, LB 1179, § 2; Laws 2006, LB 898, § 2; Laws 2007, LB199, § 9.
Effective date September 1, 2007.

Cross Reference

Intergovernmental Risk Management Act, see section 44-4301.

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Municipal Cooperative Financing Act, see section 18-2401.

CHAPTER 85

STATE UNIVERSITY, STATE COLLEGES, AND POSTSECONDARY EDUCATION

Article.

1. University of Nebraska. 85-134 to 85-1,142.
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ARTICLE 1

UNIVERSITY OF NEBRASKA

Section.

- 85-134. University of Nebraska Medical Center Medical Education Revolving Fund; established; use; investment.
- 85-1,138. Act, how cited.
- 85-1,139. Purposes of act.
- 85-1,140. Autism Treatment Program; created; administration; funding.
- 85-1,141. Autism Treatment Program Cash Fund; created; use; investment.
- 85-1,142. Department of Health and Human Services; apply for medical assistance program waiver or amendment; legislative intent.

85-134 University of Nebraska Medical Center Medical Education Revolving Fund; established; use; investment. The University of Nebraska Medical Center Medical Education Revolving Fund is hereby established to be administered by the Department of Health and Human Services. The fund shall be used to fund medical education. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2004, LB 1005, § 137; Laws 2007, LB296, § 811.
Operative date July 1, 2007.

Cross Reference

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

85-1,138 Act, how cited. Sections 85-1,138 to 85-1,142 shall be known and may be cited as the Autism Treatment Program Act.

Source: Laws 2007, LB482, § 1.
Operative date July 1, 2007.

85-1,139 Purposes of act. The purposes of the Autism Treatment Program Act are to (1) create the Autism Treatment Program administered by the Center for Autism Spectrum Disorders at the University of Nebraska Medical Center and (2) provide for the development of a waiver or an amendment to an existing waiver under the medical assistance program established in section 68-903.

Source: Laws 2007, LB482, § 2.
Operative date July 1, 2007.

85-1,140 Autism Treatment Program; created; administration; funding. The Autism Treatment Program is created. The program shall be administered by the Center for Autism Spectrum Disorders at the University of Nebraska Medical Center. The program shall provide or coordinate the provision of statewide intensive early intervention services based on behavioral principles for children with a medical diagnosis of an autism spectrum disorder or an educational verification of autism. The program shall utilize private funds and funds transferred by the Legislature from the Nebraska Health Care Cash Fund to the Autism Treatment Program Cash Fund. Transfers from the Nebraska Health Care Cash Fund in any fiscal year shall be contingent upon the receipt of private matching funds for such program, with no less than one dollar of private funds received for every two dollars transferred from the Nebraska Health Care Cash Fund. Transfers from the Nebraska Health Care Cash Fund under this section and section 71-7611 shall be utilized as the state match for the waiver established under section 85-1,142 upon the approval of such waiver.

Source: Laws 2007, LB482, § 3.
Operative date July 1, 2007.

85-1,141 Autism Treatment Program Cash Fund; created; use; investment. The Autism Treatment Program Cash Fund is created. The fund shall include revenue transferred from the Nebraska Health Care Cash Fund and revenue received from gifts, grants, bequests, donations, or other contributions from public or private sources. The Autism Treatment Program Cash Fund shall be administered by the Center for Autism Spectrum Disorders at the University of Nebraska Medical Center for purposes of the Autism Treatment Program created in section 85-1,140. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2007, LB482, § 4.
Operative date July 1, 2007.

Cross Reference

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

85-1,142 Department of Health and Human Services; apply for medical assistance program waiver or amendment; legislative intent. (1) The Department of Health and Human Services shall apply for a waiver or an amendment to an existing waiver under the medical assistance program established in section 68-903 for the purpose of providing medical assistance for intensive early intervention services based on behavioral principles for children with a medical diagnosis of an autism spectrum disorder or an educational verification of autism. Such waiver shall not be construed to create an entitlement to services provided under such waiver.

(2) It is the intent of the Legislature that such waiver (a) require means testing for and cost-sharing by recipient families, (b) limit eligibility only to children for whom such services have been initiated prior to the age of nine years, (c) limit the number of children served according to available funding, (d) require demonstrated progress toward the attainment of treatment goals as a condition for continued receipt of medical assistance benefits for such treatment, (e) be developed in consultation with the Health and Human Services Committee of the Legislature and the federal Centers for Medicare and Medicaid Services and with the input of parents and families of children with autism spectrum disorders and organizations advocating on behalf of such persons, and (f) be submitted to the federal Centers for Medicare and Medicaid Services as soon as practicable, but no later than July 1, 2008.

Source: Laws 2007, LB482, § 5.
 Operative date July 1, 2007.

ARTICLE 9**POSTSECONDARY EDUCATION****(m) STUDENT DIVERSITY SCHOLARSHIP PROGRAM ACT**

Section.

- 85-9,177. Act, how cited.
- 85-9,178. Legislative findings and intent.
- 85-9,179. Endowed scholarship funds; use; purpose.
- 85-9,180. Appropriations; use.
- 85-9,181. Funds; use; administration; manner.
- 85-9,182. Awards; committee; determination.

(m) STUDENT DIVERSITY SCHOLARSHIP PROGRAM ACT

85-9,177 Act, how cited. Sections 85-9,177 to 85-9,182 shall be known and may be cited as the Student Diversity Scholarship Program Act.

Source: Laws 2000, LB 1379, § 1; Laws 2007, LB342, § 32.
 Operative date July 1, 2007.

85-9,178 Legislative findings and intent. (1) The Legislature finds that the State of Nebraska has a compelling interest to provide access to the University of Nebraska, the state colleges, and the community colleges for students from diverse racial, ethnic, and cultural backgrounds who often find that the financial requirements of postsecondary education are a major obstacle. The Legislature further finds that the State of Nebraska has a compelling interest in attaining greater diversity in the racial, ethnic, and cultural makeup of the student bodies at the University of Nebraska, the state colleges, and the community colleges because of the educational benefits that a diverse educational environment will produce for all students attending the University of Nebraska, the state colleges, and the community colleges.

(2) It is the intent of the Legislature:

(a) To appropriate funds to support a student diversity program for the purpose of developing more racially, ethnically, and culturally diverse student bodies at the state's public postsecondary educational institutions;

(b) That the student diversity scholarship program be designed and implemented so as to achieve a greater racial, ethnic, and cultural diversity in student populations in fulfillment of the compelling interest found by the Legislature pursuant to subsection (1) of this section; and

(c) That all funds appropriated by the Legislature for student diversity scholarships at the University of Nebraska, the state colleges, and the community colleges shall be used in coordination with private donations for such scholarships and in consultation with the major donors thereof and in coordination with federal grant funds available to students at the University of Nebraska, the state colleges, and the community colleges so as to maximize the level of benefits and accomplish the purposes of the Student Diversity Scholarship Program Act.

Source: Laws 2000, LB 1379, § 2; Laws 2007, LB342, § 33.
Operative date July 1, 2007.

85-9,179 Endowed scholarship funds; use; purpose. (1) All funds appropriated by the Legislature for the Student Diversity Scholarship Program Act shall be used to support endowed scholarship funds which shall be held, managed, and invested as authorized by section 72-1246 with only the income therefrom expended for scholarships.

(2) The purpose of such endowed scholarship funds is to provide total or partial undergraduate scholarships for tuition, fees, board and room, and books at all campuses of the University of Nebraska, the state colleges, and the community colleges to full-time undergraduate students who fulfill the criteria for award of a student diversity scholarship and who cannot afford such educational expenses due to lack of financial resources available to them.

Source: Laws 2000, LB 1379, § 3; Laws 2007, LB342, § 34.
Operative date July 1, 2007.

85-9,180 Appropriations; use. (1) Funds appropriated for fiscal year 2000-01 and each fiscal year thereafter before fiscal year 2007-08 for the Minority Scholarship Program

Act as it existed immediately prior to July 1, 2007, shall be used for the benefit of students pursuant to the Minority Scholarship Program Act at the University of Nebraska, the state colleges, and the community colleges.

(2) Funds appropriated for fiscal year 2007-08 and each fiscal year thereafter for the Student Diversity Scholarship Program Act shall be used for the benefit of students pursuant to the Student Diversity Scholarship Program Act at the University of Nebraska, the state colleges, and the community colleges.

Source: Laws 2000, LB 1379, § 4; Laws 2007, LB342, § 35.
Operative date July 1, 2007.

85-9,181 Funds; use; administration; manner. (1) Funds appropriated for the Student Diversity Scholarship Program Act for the benefit of students at the University of Nebraska and students attending any community colleges who are enrolled in an associate degree program with the intention of transferring to the University of Nebraska shall be used, administered, and invested in such manner as the Board of Regents of the University of Nebraska, in consultation with the board of governors of each participating community college, shall determine.

(2) Funds appropriated for the Student Diversity Scholarship Program Act for the benefit of students at the state colleges and students attending any community colleges who are enrolled in an associate degree program with the intention of transferring to a state college shall be used, administered, and invested in such manner as the Board of Trustees of the Nebraska State Colleges, in consultation with the board of governors of each participating community college, shall determine.

Source: Laws 2000, LB 1379, § 5; Laws 2003, LB 106, § 1; Laws 2007, LB342, § 36.
Operative date July 1, 2007.

85-9,182 Awards; committee; determination. Criteria for the award of scholarships under the Student Diversity Scholarship Program Act shall be determined by a committee selected by the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, and the community college boards of governors. The committee shall include members of underrepresented minority groups and private donors to the endowed scholarship funds. Awards shall be consistent with the intent stated in the act and with the constitutions and laws of the United States and the State of Nebraska.

Source: Laws 2000, LB 1379, § 6; Laws 2007, LB342, § 37.
Operative date July 1, 2007.

ARTICLE 14

COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION

(a) COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION ACT

Section.

85-1412. Commission; additional powers and duties.

85-1416. Budget and state aid requests; review; commission; duties.

85-1418. Program or capital construction project; state funds; restrictions on use; district court of Lancaster County; jurisdiction; appeals; procedure.

(a) COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION ACT

85-1412 Commission; additional powers and duties. The commission shall have the following additional powers and duties:

(1) Conduct surveys and studies as may be necessary to undertake the coordination function of the commission pursuant to section 85-1403 and request information from governing boards and appropriate administrators of public institutions and other governmental agencies for research projects. All public institutions and governmental agencies receiving state funds shall comply with reasonable requests for information under this subdivision. Public institutions may comply with such requests pursuant to section 85-1417;

(2) Recommend to the Legislature and the Governor legislation it deems necessary or appropriate to improve postsecondary education in Nebraska and any other legislation it deems appropriate to change the role and mission provisions in sections 85-917 to 85-966.01;

(3) Establish any advisory committees as may be necessary to undertake the coordination function of the commission pursuant to section 85-1403 or to solicit input from affected parties such as students, faculty, governing boards, administrators of the public institutions, administrators of the private nonprofit institutions of postsecondary education and proprietary institutions in the state, and community and business leaders regarding the coordination function of the commission;

(4) Participate in or designate an employee or employees to participate in any committee which may be created to prepare a coordinated plan for the delivery of educational programs and services in Nebraska through the telecommunications system;

(5) Seek a close liaison with the State Board of Education and the State Department of Education in recognition of the need for close coordination of activities between elementary and secondary education and postsecondary education;

(6) Administer the Integrated Postsecondary Education Data System or other information system or systems to provide the commission with timely, comprehensive, and meaningful information pertinent to the exercise of its duties. The information system shall be designed to provide comparable data on each public institution. The commission shall also administer the uniform information system prescribed in sections 85-1421 to 85-1427 known as the

Nebraska Educational Data System. Public institutions shall supply the appropriate data for the information system or systems required by the commission;

(7) Administer the Access College Early Scholarship Program Act and the Nebraska Scholarship Act;

(8) Accept and administer loans, grants, and programs from the federal or state government and from other sources, public and private, for carrying out any of its functions, including the administration of privately endowed scholarship programs. Such loans and grants shall not be expended for any other purposes than those for which the loans and grants were provided. The commission shall determine eligibility for such loans, grants, and programs, and such loans and grants shall not be expended unless approved by the Governor;

(9) Consistent with section 85-1620, approve, in a timely manner, new baccalaureate degree programs to be offered at private postsecondary career schools as defined in section 85-1603. The commission may charge a reasonable fee based on its administrative costs for authorizations pursuant to this subdivision and section 85-1620. The commission shall report such action to the Commissioner of Education;

(10) Pursuant to sections 85-1101 to 85-1104, authorize out-of-state institutions of higher or postsecondary education to offer courses or degree programs in this state;

(11) Pursuant to sections 85-1105 to 85-1111, approve or disapprove petitions to establish new private colleges in this state;

(12) On or before December 1, 2000, and on or before December 1 every two years thereafter, submit to the Legislature and the Governor a report of its objectives and activities and any new private colleges in Nebraska and the implementation of any recommendations of the commission for the preceding two calendar years;

(13) Provide staff support for interstate compacts on postsecondary education; and

(14) Request inclusion of the commission in any existing grant review process and information system.

Source: Laws 1991, LB 663, § 15; Laws 1993, LB 93, § 7; Laws 1994, LB 683, § 18; Laws 1999, LB 816, § 14; Laws 2003, LB 7, § 5; Laws 2003, LB 574, § 26; Laws 2003, LB 685, § 29; Laws 2007, LB192, § 1.
Effective date September 1, 2007.

Cross Reference

Access College Early Scholarship Program Act, see section 85-2101.

Integrated Postsecondary Education Data System, see section 85-1424.

Nebraska Scholarship Act, see section 85-1901.

85-1416 Budget and state aid requests; review; commission; duties. (1) Pursuant to the authority granted in Article VII, section 14, of the Constitution of Nebraska and the Coordinating Commission for Postsecondary Education Act, the commission shall, in accordance with the coordination function of the commission pursuant to section 85-1403, review and modify, if needed to promote compliance and consistency with the comprehensive statewide plan and prevent unnecessary duplication, the budget requests of the governing boards.

(2)(a) At least thirty days prior to submitting to the Governor their biennial budget requests pursuant to section 81-1113 and any major deficit appropriation requests pursuant to instructions of the Department of Administrative Services, the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges shall each submit to the commission an outline of its proposed operating budget. The outline of its proposed operating budget or outline of proposed state aid request shall include those information summaries provided to the institution's governing board describing the respective institution's budget for the next fiscal year or biennium. The outline shall contain projections of funds necessary for (i) the retention of current programs and services at current funding levels, (ii) any inflationary costs necessary to maintain current programs and services at the current programmatic or service levels, and (iii) proposed new and expanded programs and services. In addition to the outline, the commission may request an institution to provide to the commission any other supporting information to assist the commission in its budget review process. An institution may comply with such requests pursuant to section 85-1417.

(b) On September 15 of each biennial budget request year, the boards of governors of the community colleges or their designated representatives shall submit to the commission outlines of their proposed state aid requests pursuant to the Community College Foundation and Equalization Aid Act.

(c) The commission shall analyze institutional budget priorities in light of the comprehensive statewide plan, role and mission assignments, and the goal of prevention of unnecessary duplication. The commission shall submit to the Governor and Legislature by October 15 of each year recommendations for approval or modification of the budget requests together with a rationale for its recommendations. The analysis and recommendations by the commission shall focus on budget requests for new and expanded programs and services and major statewide funding issues or initiatives as identified in the comprehensive statewide plan. If an institution does not comply with the commission's request pursuant to subdivision (a) of this subsection for additional budget information, the commission may so note the refusal and its specific information request in its report of budget recommendations. The commission shall also provide to the Governor and the Appropriations Committee of the Legislature on or before October 1 of each even-numbered year a report identifying public policy issues relating to student tuition and fees, including the appropriate relative differentials of tuition and fee levels between the sectors of public postsecondary education in the state consistent with the comprehensive statewide plan.

(3) At least thirty days prior to submitting to the Governor their biennial budget requests pursuant to section 81-1113 and any major deficit appropriation requests pursuant to instructions of the Department of Administrative Services, the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges shall each submit to the commission information the commission deems necessary regarding each board's capital construction budget requests. The commission shall review the capital construction budget request information and may recommend to the Governor and the

Legislature modification, approval, or disapproval of such requests consistent with the statewide facilities plan and any project approval determined pursuant to subsection (10) of section 85-1414 and to section 85-1415. The commission shall develop from a statewide perspective a unified prioritization of individual capital construction budget requests for which it has recommended approval and submit such prioritization to the Governor and the Legislature for their consideration. In establishing its prioritized list, the commission may consider and respond to the priority order established by the Board of Regents or the Board of Trustees in their respective capital construction budget requests.

(4) Nothing in this section shall be construed to affect other constitutional, statutory, or administrative requirements for the submission of budget or state aid requests by the governing boards to the Governor and the Legislature.

Source: Laws 1991, LB 663, § 19; Laws 1993, LB 239, § 21; Laws 1994, LB 683, § 22; Laws 1999, LB 816, § 17; Laws 2002, Second Spec. Sess., LB 12, § 5; Laws 2006, LB 962, § 5; Laws 2007, LB342, § 38. Operative date July 1, 2007.

Cross Reference

Community College Foundation and Equalization Act, see section 85-2201.

85-1418 Program or capital construction project; state funds; restrictions on use; district court of Lancaster County; jurisdiction; appeals; procedure. (1) No state warrant shall be issued by the Department of Administrative Services or used by any public institution for the purpose of funding any program or capital construction project which has not been approved or which has been disapproved by the commission pursuant to the Coordinating Commission for Postsecondary Education Act. If state funding for any such program or project cannot be or is not divided into warrants separate from other programs or projects, the department shall reduce a warrant to the public institution which includes funding for the program or project by the amount of tax funds designated by the Legislature which are budgeted in that fiscal year by the public institution for use for the program or project.

(2) The department may reduce the amount of state aid distributed to a community college area pursuant to the Community College Foundation and Equalization Aid Act by the amount of funds used by the area to provide a program or capital construction project which has not been approved or which has been disapproved by the commission.

(3) The district court of Lancaster County shall have jurisdiction to enforce an order or decision of the commission entered pursuant to the Coordinating Commission for Postsecondary Education Act and to enforce this section.

(4) Any person or public institution aggrieved by a final order of the commission entered pursuant to section 85-1413, 85-1414, 85-1415, or 85-1416 shall be entitled to judicial review of the order. Proceedings for review shall be instituted by filing a petition in the district court of Lancaster County within thirty days after public notice of the final decision by the commission is given. The filing of the petition or the service of summons upon the commission shall not stay enforcement of such order. The review shall be conducted by the court without a jury on the record of the commission. The court shall have jurisdiction to enjoin enforcement of any order of the commission which is (a) in violation of constitutional

provisions, (b) in excess of the constitutional or statutory authority of the commission, (c) made upon unlawful procedure, or (d) affected by other error of law.

(5) A party may secure a review of any final judgment of the district court by appeal to the Court of Appeals. Such appeal shall be taken in the manner provided by law for appeals in civil cases and shall be heard de novo on the record.

Source: Laws 1991, LB 663, § 21; Laws 1992, LB 360, § 40; Laws 1993, LB 239, § 22; Laws 2007, LB342, § 39.
Operative date July 1, 2007.

Cross Reference

Community College Foundation and Equalization Act, see section 85-2201.

ARTICLE 15

COMMUNITY COLLEGES

Section.

- 85-1503. Terms, defined.
- 85-1511. Board; powers and duties; enumerated.
- 85-1517. Board; power to certify tax levy; limit; purpose; approval required to raise levy over limit; how collected.
- 85-1536. Transferred to section 85-2222.
- 85-1536.01. Repealed. Laws 2007, LB 342, § 46.
- 85-1537. Repealed. Laws 2007, LB 342, § 46.
- 85-1538. Transferred to section 85-2229.

85-1503 Terms, defined. For purposes of sections 85-1501 to 85-1540, unless the context otherwise requires:

(1) Community college means an educational institution operating and offering programs pursuant to such sections;

(2) Community college area means an area established by section 85-1504;

(3) Board means the Community College Board of Governors for each community college area;

(4) Full-time equivalent student means, in the aggregate, the equivalent of a registered student who in a twelve-month period is enrolled in (a) thirty semester credit hours or forty-five quarter credit hours of classroom, laboratory, clinical, practicum, or independent study course work or cooperative work experience or (b) nine hundred contact hours of classroom or laboratory course work for which credit hours are not offered or awarded. Avocational and recreational community service programs or courses are not included in determining full-time equivalent students or student enrollment;

(5) Contact hour means an educational activity consisting of sixty minutes minus break time and required time to change classes;

(6) Credit hour means the unit used to ascertain the educational value of course work offered by the institution to students enrolling for such course work, earned by such students upon successful completion of such course work, and for which tuition is charged. A credit hour may be offered and earned in any of several instructional delivery systems, including, but not limited to, classroom hours, laboratory hours, clinical hours, practicum hours, cooperative work experience, and independent study. A credit hour shall consist of a minimum of: (a) Ten quarter or fifteen semester classroom contact hours per term of enrollment; (b) twenty quarter or thirty semester academic transfer and academic support laboratory hours per term of enrollment; (c) thirty quarter or forty-five semester vocational laboratory hours per term of enrollment; (d) thirty quarter or forty-five semester clinical or practicum contact hours per term of enrollment; or (e) forty quarter or sixty semester cooperative work experience contact hours per term of enrollment. An institution may include in a credit hour more classroom, laboratory, clinical, practicum, or cooperative work experience hours than the minimum required in this subdivision. The institution shall publish in its catalog, or otherwise make known to the student in writing prior to the student enrolling or paying tuition for any courses, the number of credit or contact hours offered in each such course. Such published credit or contact hour offerings shall be used to determine whether a student is a full-time equivalent student pursuant to subdivision (4) of this section;

(7) Classroom hour means a minimum of fifty minutes of formalized instruction on campus or off campus in which a qualified instructor applying any combination of instructional methods such as lecture, directed discussion, demonstration, or the presentation of audiovisual materials is responsible for providing an educational experience to students;

(8) Laboratory hour means a minimum of fifty minutes of educational activity on campus or off campus in which students conduct experiments, perfect skills, or practice procedures under the direction of a qualified instructor;

(9) Clinical hour means a minimum of fifty minutes of educational activity on campus or off campus during which the student is assigned practical experience under constant supervision at a health-related agency, receives individual instruction in the performance of a particular function, and is observed and critiqued in the repeat performance of such function. Adjunct professional personnel, who may or may not be paid by the college, may be used for the directed supervision of students and for the delivery of part of the didactic phase of the experience;

(10) Practicum hour means a minimum of fifty minutes of educational activity on campus or off campus during which the student is assigned practical experiences, receives individual instruction in the performance of a particular function, and is observed and critiqued by an instructor in the repeat performance of such function. Adjunct professional personnel, who may or may not be paid by the college, may be used for the directed supervision of the students;

(11) Cooperative work experience means an internship or on-the-job training, designed to provide specialized skills and educational experiences, which is coordinated, supervised,

observed, and evaluated by qualified college staff or faculty and may be completed on campus or off campus, depending on the nature of the arrangement;

(12) Independent study means an arrangement between an instructor and a student in which the instructor is responsible for assigning work activity or skill objectives to the student, personally providing needed instruction, assessing the student's progress, and assigning a final grade. Credit hours shall be assigned according to the practice of assigning credits in similar courses;

(13) Full-time equivalent student enrollment total means the total of full-time equivalent students enrolled in a community college in any fiscal year;

(14) General academic transfer course means a course offering in a one-year or two-year degree-credit program, at the associate degree level or below, intended by the offering institution for transfer into a baccalaureate program. The completion of the specified courses in a general academic transfer program may include the award of a formal degree;

(15) Applied technology or occupational course means a course offering in an instructional program, at the associate degree level or below, intended to prepare individuals for immediate entry into a specific occupation or career. The primary intent of the institutions offering an applied technology or occupational program shall be that such program is for immediate job entry. The completion of the specified courses in an applied technology or occupational program may include the award of a formal degree, diploma, or certificate;

(16) Academic support course means a general education academic course offering which may be necessary to support an applied technology or occupational program;

(17) Class 1 course means an applied technology or occupational course offering which requires the use of equipment, facilities, or instructional methods easily adaptable for use in a general academic transfer program classroom or laboratory;

(18) Class 2 course means an applied technology or occupational course offering which requires the use of specialized equipment, facilities, or instructional methods not easily adaptable for use in a general academic transfer program classroom or laboratory;

(19) Full-time equivalent student means a full-time equivalent student subject to the following limitation: The number of credit and contact hours which shall be counted by any community college area in which a tribally controlled community college is located shall include credit and contact hours awarded by such tribally controlled community college to students for which such institution received no federal reimbursement pursuant to the Tribally Controlled Community College Assistance Act, 25 U.S.C. 1801;

(20) Full-time equivalent total means the total of all full-time equivalents accumulated in a community college area in any fiscal year;

(21) Reimbursable educational unit means a full-time equivalent student multiplied by (a) for a general academic transfer course or an academic support course, a factor of one, (b) for a Class 1 course, a factor of one and fifty-hundredths, (c) for a Class 2 course, a factor of two, (d) for a tribally controlled community college general academic transfer course or academic support course, a factor of two, (e) for a tribally controlled community college Class

1 course, a factor of three, and (f) for a tribally controlled community college Class 2 course, a factor of four;

(22) Reimbursable educational unit total means the total of all reimbursable educational units accumulated in a community college area in any fiscal year;

(23) Special instructional term means any term which is less than fifteen weeks for community colleges using semesters or ten weeks for community colleges using quarters;

(24) Statewide reimbursable full-time equivalent total means the total of all reimbursable full-time equivalents accumulated statewide for the community college in any fiscal year;

(25) Tribally controlled community college means an educational institution operating and offering programs pursuant to the Tribally Controlled Community College Assistance Act, 25 U.S.C. 1801; and

(26) Tribally controlled community college state aid amount means the quotient of the amount of state aid to be distributed pursuant to the Community College Foundation and Equalization Aid Act for the current fiscal year to a community college area in which a tribally controlled community college is located divided by the reimbursable educational unit total for such community college area for the immediately preceding fiscal year, with such quotient then multiplied by the average reimbursable educational units derived pursuant to subdivision (19) of this section for the immediately preceding fiscal year.

Source: Laws 1975, LB 344, § 2; Laws 1977, LB 459, § 10; Laws 1979, LB 363, § 1; Laws 1984, LB 890, § 1; Laws 1987, LB 329, § 1; Laws 1988, LB 802, § 30; Laws 1991, LB 663, § 45; Laws 1992, LB 921, § 1; R.S.Supp., 1992, § 79-2637; Laws 1993, LB 239, § 25; Laws 1995, LB 241, § 1; Laws 1997, LB 269, § 68; Laws 1999, LB 67, § 1; Laws 2005, LB 38, § 3; Laws 2007, LB 342, § 40. Operative date July 1, 2007.

Cross Reference

Community College Foundation and Equalization Act, see section 85-2201.

85-1511 Board; powers and duties; enumerated. In addition to any other powers and duties imposed upon the community college system or its areas, campuses, or boards by the Community College Foundation and Equalization Aid Act, sections 85-917 to 85-966 and 85-1501 to 85-1540, and any other provision of law, each board shall:

(1) Have general supervision, control, and operation of each community college within its jurisdiction;

(2) Subject to coordination by the Coordinating Commission for Postsecondary Education as prescribed in the Coordinating Commission for Postsecondary Education Act, develop and offer programs of applied technology education, academic transfer programs, academic support courses, and such other programs and courses as the needs of the community college area served may require. The board shall avoid unnecessary duplication of existing programs and courses in meeting the needs of the students and the community college area;

(3) Employ, for a period to be fixed by the board, executive officers, members of the faculty, and such other administrative officers and employees as may be necessary or appropriate and fix their salaries and duties;

(4) Subject to coordination by the Coordinating Commission for Postsecondary Education as prescribed in the Coordinating Commission for Postsecondary Education Act, construct, lease, purchase, purchase on contract, operate, equip, and maintain facilities;

(5) Contract for services connected with the operation of the community college area as needs and interest demand;

(6) Cause an examination and comprehensive audit of the books, accounts, records, and affairs, including full-time equivalent student enrollment totals, full-time equivalent totals, and reimbursable educational unit totals as defined in section 85-1503, to be made annually covering the most recently completed fiscal year. The audit of each area shall include the full-time equivalent student enrollment totals, full-time equivalent totals, and reimbursable educational unit totals for the three most recently completed fiscal years which shall be used for calculation of aid to the community college areas as prescribed in the Community College Foundation and Equalization Aid Act. The audit shall also include the county-certified property valuations for the community college area for the three most recently completed fiscal years which shall be used for calculation of aid to such community college areas. Such examination and audit of the books, accounts, records, and affairs shall be completed and filed with the Auditor of Public Accounts and the Department of Administrative Services on or before October 15 of each year. The examination and audit of the full-time equivalent student enrollment totals, full-time equivalent totals, and reimbursable educational unit totals shall be completed and filed with the Auditor of Public Accounts and the Department of Administrative Services on or before August 15 of each year;

(7) Establish fees and charges for the facilities authorized by sections 85-1501 to 85-1540. Each board may enter into agreements with owners of facilities to be used for housing regarding the management, operation, and government of such facilities and may employ necessary employees to govern, manage, and operate such facilities;

(8) Receive such gifts, grants, conveyances, and bequests of real and personal property from public or private sources as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the community college programs as specified by law. Each board may sell, lease, exchange, invest, or expend such gifts, grants, conveyances, and bequests or the proceeds, rents, profits, and income therefrom according to the terms and conditions thereof and adopt and promulgate rules and regulations governing the receipt and expenditure of such proceeds, rents, profits, and income, except that acceptance of such gifts, grants, or conveyances shall not be conditioned on matching state or local funds;

(9) Prescribe the courses of study for any community college under its control and publish such catalogs and bulletins as may be necessary;

(10) Grant to every student upon graduation or completion of a course of study a suitable diploma, associate degree, or certificate;

(11) Adopt and promulgate such rules and regulations and perform all other acts as the board may deem necessary or appropriate to the administration of the community college area. Such rules and regulations shall include, but not be limited to, rules and regulations

relating to facilities, housing, scholarships, discipline, and pedestrian and vehicular traffic on property owned, operated, or maintained by the community college area;

(12) Employ, for a period to be fixed by the board, an executive officer for the community college area and, by written order filed in its office, delegate to such executive officer any of the powers and duties vested in or imposed upon it by sections 85-1501 to 85-1540. Such delegated powers and duties may be exercised in the name of the board;

(13) Acquire real property by eminent domain pursuant to sections 76-701 to 76-724;

(14) Acquire real and personal property and sell, convey, or lease such property whenever the community college area will be benefited thereby. The sale, conveyance, or lease of any real estate owned by a community college area shall be effective only when authorized by an affirmative vote of at least two-thirds of all the members of the board;

(15) Enter into agreements for services, facilities, or equipment and for the presentation of courses for students when such agreements are deemed to be in the best interests of the education of the students involved;

(16) Transfer tribally controlled community college state aid amounts to a tribally controlled community college located within its community college area;

(17) Invest, after proper consideration of the requirements for the availability of money, funds of the community college in securities the nature of which individuals of prudence, discretion, and intelligence acquire or retain in dealing with the property of another;

(18) Establish tuition rates for courses of instruction offered by each community college within its community college area. Separate tuition rates shall be established for students who are nonresidents of the State of Nebraska;

(19) Establish a fiscal year for the community college area which conforms to the fiscal year of the state; and

(20) Exercise any other powers, duties, and responsibilities necessary to carry out sections 85-1501 to 85-1540.

Source: Laws 1975, LB 344, § 9; Laws 1977, LB 459, § 11; Laws 1978, LB 756, § 52; Laws 1979, LB 363, § 5; Laws 1987, LB 30, § 2; Laws 1988, LB 802, § 32; Laws 1991, LB 663, § 47; R.S.Supp., 1992, § 79-2644; Laws 1993, LB 239, § 33; Laws 1997, LB 269, § 69; Laws 2007, LB342, § 41.
Operative date July 1, 2007.

Cross Reference

Community College Foundation and Equalization Act, see section 85-2201.

Coordinating Commission for Postsecondary Education Act, see section 85-1401.

85-1517 Board; power to certify tax levy; limit; purpose; approval required to raise levy over limit; how collected. (1) The board may certify to the county board of equalization of each county within the community college area a tax levy not to exceed the maximum levy calculated pursuant to the Community College Foundation and Equalization Aid Act on each one hundred dollars on the taxable valuation of all property subject to the levy within the community college area, uniform throughout such area, for the purpose of supporting operating expenditures of the community college area.

(2)(a) In addition to the levies provided in subsection (1) of this section and this subsection, the board may certify to the county board of equalization of each county within the community

college area a tax levy of not to exceed one cent on each one hundred dollars on the taxable valuation of all property within the community college area, uniform throughout such area, for the purpose of establishing a capital improvement fund and bond sinking fund as provided in section 85-1515.

(b) In addition to the levies provided in subsection (1) of this section and this subsection, the board may also certify to the county board of equalization of each county within the community college area a tax levy on each one hundred dollars on the taxable valuation of all property within the community college area, uniform throughout such area, in the amount which will produce funds only in the amount necessary to pay for funding accessibility barrier elimination project costs and abatement of environmental hazards as such terms are defined in section 79-10,110. Such tax levy shall not be so certified unless approved by an affirmative vote of a majority of the board taken at a public meeting of the board following notice and a hearing. The board shall give at least seven days' notice of such public hearing and shall publish such notice once in a newspaper of general circulation in the area to be affected by the increase.

(c) In addition to the levies provided in subsection (1) of this section and this subsection, the board of any community college area whose valuation per full-time equivalent student was less than eighty-two percent of the statewide average of all community colleges for fiscal year 1997-98 may also certify to the county board of equalization of each county within the community college area a tax levy up to an additional one-half cent for each of fiscal years 2005-06 and 2006-07, on each one hundred dollars on the taxable valuation of all property within the community college area, uniform throughout such area. Such tax levy shall not be so certified unless approved by an affirmative vote of three-fourths of the board taken at a public meeting of the board following notice and a hearing. The board shall give at least seven days' notice of such public hearing and shall publish such notice once in a newspaper of general circulation in the area to be affected by the increase.

(3) The levy provided by subdivision (2)(a) of this section may be exceeded by that amount necessary to retire the general obligation bonds assumed by the community college area or issued pursuant to section 85-1515 according to the terms of such bonds or for any obligation pursuant to section 85-1535 entered into prior to January 1, 1997.

(4) The tax shall be levied and assessed in the same manner as other property taxes and entered on the books of the county treasurer. The proceeds of the tax, as collected, shall be remitted to the treasurer of the board not less frequently than once each month.

Source: Laws 1975, LB 344, § 15; Laws 1978, LB 922, § 5; Laws 1979, LB 363, § 2; Laws 1979, LB 187, § 251; Laws 1980, LB 599, § 16; Laws 1980, LB 824, § 2; Laws 1981, LB 320, § 1; Laws 1984, LB 881, § 1; Laws 1986, LB 796, § 1; Laws 1988, LB 38, § 1; Laws 1990, LB 1050, § 1; Laws 1992, LB 719A, § 197; Laws 1992, LB 1001, § 35; R.S.Supp.,1992, § 79-2650; Laws 1993, LB 239, § 39; Laws 1995, LB 268, § 1; Laws 1996, LB 299, § 32; Laws 1996, LB 900, § 1084; Laws 1996, LB 1114, § 69; Laws 1997, LB 269, § 72; Laws 2005, LB 38, § 4; Laws 2007, LB342, § 42. Operative date July 1, 2007.

Cross Reference

Community College Foundation and Equalization Act, see section 85-2201.

85-1536 Transferred to section 85-2222.

85-1536.01 Repealed. Laws 2007, LB 342, § 46.

85-1537 Repealed. Laws 2007, LB 342, § 46.

85-1538 Transferred to section 85-2229.

ARTICLE 19

NEBRASKA SCHOLARSHIP ACT

Section.

85-1903. Award, defined.

85-1903 Award, defined. Award means a grant of money by the commission to an eligible student for educational expenses. Awards shall not exceed:

(1) For the 2007-08 award year, fifty percent of the tuition and mandatory fees for a full-time, resident, undergraduate student for the last completed award year at the University of Nebraska-Lincoln; and

(2) For the 2008-09 award year and each award year thereafter, twenty-five percent of the tuition and mandatory fees for a full-time, resident, undergraduate student for the last completed award year at the University of Nebraska-Lincoln.

Source: Laws 2003, LB 574, § 3; Laws 2004, LB 1107, § 1; Laws 2006, LB 962, § 6; Laws 2007, LB342, § 43.
Operative date July 1, 2007.

ARTICLE 20

COMMUNITY SCHOLARSHIP FOUNDATION PROGRAM ACT

Section.

85-2001. Repealed. Laws 2007, LB 192, § 11.

85-2002. Repealed. Laws 2007, LB 192, § 11.

85-2003. Repealed. Laws 2007, LB 192, § 11.

85-2004. Repealed. Laws 2007, LB 192, § 11.

85-2005. Repealed. Laws 2007, LB 192, § 11.

85-2006. Repealed. Laws 2007, LB 192, § 11.

85-2007. Repealed. Laws 2007, LB 192, § 11.

85-2008. Repealed. Laws 2007, LB 192, § 11.

85-2009. Repealed. Laws 2007, LB 192, § 11.

85-2010. Repealed. Laws 2007, LB 192, § 11.

85-2001 Repealed. Laws 2007, LB 192, § 11.

- 85-2002 Repealed.** Laws 2007, LB 192, § 11.
- 85-2003 Repealed.** Laws 2007, LB 192, § 11.
- 85-2004 Repealed.** Laws 2007, LB 192, § 11.
- 85-2005 Repealed.** Laws 2007, LB 192, § 11.
- 85-2006 Repealed.** Laws 2007, LB 192, § 11.
- 85-2007 Repealed.** Laws 2007, LB 192, § 11.
- 85-2008 Repealed.** Laws 2007, LB 192, § 11.
- 85-2009 Repealed.** Laws 2007, LB 192, § 11.
- 85-2010 Repealed.** Laws 2007, LB 192, § 11.

ARTICLE 21

ACCESS COLLEGE EARLY SCHOLARSHIP PROGRAM ACT

Section.

- 85-2101. Act, how cited.
- 85-2102. Terms, defined.
- 85-2103. Access College Early Scholarship Program established; purpose.
- 85-2104. Student; eligibility.
- 85-2105. Applicant; commission; powers and duties; educational institution receiving payment; report required.
- 85-2106. Report.
- 85-2107. Review of adverse decision.
- 85-2108. Rules and regulations.

85-2101 Act, how cited. Sections 85-2101 to 85-2108 shall be known and may be cited as the Access College Early Scholarship Program Act.

Source: Laws 2007, LB192, § 2.
Effective date September 1, 2007.

85-2102 Terms, defined. For purposes of the Access College Early Scholarship Program Act:

- (1) Commission means the Coordinating Commission for Postsecondary Education;
- (2) Extreme hardship means any event, including fire, illness, accident, or job loss, that has recently resulted in a significant financial difficulty for a student or the student's parent or legal guardian;

(3) Postsecondary educational institution means a two-year or four-year college or university which is a member institution of an accrediting body recognized by the United States Department of Education;

(4) Qualified postsecondary educational institution means a postsecondary educational institution located in Nebraska which has agreed, on a form developed and provided by the commission, to comply with the requirements of the act; and

(5) Student means a student attending a Nebraska high school with a reasonable expectation that such student will meet the residency requirements of section 85-502 upon graduation from a Nebraska high school.

Source: Laws 2007, LB192, § 3.
Effective date September 1, 2007.

85-2103 Access College Early Scholarship Program established; purpose. The Access College Early Scholarship Program is established. The purpose of the program is to provide financial assistance to low-income students for courses to be taken for credit from a qualified postsecondary educational institution while still enrolled in high school. The program shall be administered by the commission.

Source: Laws 2007, LB192, § 4.
Effective date September 1, 2007.

85-2104 Student; eligibility. A student who is applying to take one or more courses for credit from a qualified postsecondary educational institution is eligible for the Access College Early Scholarship Program if:

- (1) Such student or the student's parent or legal guardian is eligible to receive:
 - (a) Supplemental Security Income;
 - (b) Food stamps;
 - (c) Free or reduced-price lunches under United States Department of Agriculture child nutrition programs;
 - (d) Aid to families with dependent children; or
 - (e) Assistance under the Special Supplemental Nutrition Program for Women, Infants, and Children; or
- (2) The student or the student's parent or legal guardian has experienced an extreme hardship.

Source: Laws 2007, LB192, § 5.
Effective date September 1, 2007.

85-2105 Applicant; commission; powers and duties; educational institution receiving payment; report required. (1) An applicant for the Access College Early Scholarship Program shall complete an application form developed and provided by the commission and shall forward the form to his or her guidance counselor. The guidance counselor shall verify the student's eligibility under the Access College Early Scholarship Program Act and shall forward the information to the commission for review within fifteen

days following receipt of the form from the student. Notification of tuition and mandatory fees to be accrued by the student shall be provided to the commission by the student, high school, or qualified postsecondary educational institution as determined by the commission.

(2) The commission shall review the application and verify the student's eligibility under the act. The commission shall notify the student and the student's guidance counselor of the verification of eligibility and the estimated award amount in writing within thirty days following receipt of the form from the student's guidance counselor. The scholarship award shall equal the lesser of tuition and mandatory fees accrued by the student after any discounts applicable to such student from the qualified postsecondary educational institution or the tuition and mandatory fees that would have been accrued by the student for the same number of credit hours if the student were taking the course as a full-time, resident, undergraduate student from the University of Nebraska-Lincoln. The commission shall forward such amount directly to the qualified postsecondary educational institution as payment of such student's tuition and mandatory fees.

(3) The commission shall make such payments in the order the applications are received by the commission until funds are inadequate to fulfill any remaining scholarships.

(4) There is no limit on the number of scholarships a student may receive under the act.

(5) For any student receiving a scholarship pursuant to the act for tuition and mandatory fees, the qualified postsecondary educational institution receiving the payment shall report either the student's grade for the course or the student's failure to complete the course to the commission within thirty days after the end of the course or within one hundred eighty days after receipt of a payment pursuant to the act if the course for which the scholarship was awarded does not have a specified ending date. The commission shall keep the identity of students receiving scholarships confidential, except as necessary to comply with the requirements of the act.

Source: Laws 2007, LB192, § 6.
Effective date September 1, 2007.

85-2106 Report. The commission shall prepare a biennial report on scholarships awarded pursuant to the Access College Early Scholarship Program Act and shall submit the report to the Clerk of the Legislature. The report shall include, but not be limited to, the number and amount of scholarships awarded, the postsecondary educational institutions attended by scholarship recipients, and information regarding the success of scholarship recipients in the courses for which the scholarships were awarded.

Source: Laws 2007, LB192, § 7.
Effective date September 1, 2007.

85-2107 Review of adverse decision. A student or the student's parent or legal guardian may request in writing a review of any adverse decision by requesting such review within twenty days following notice of the adverse decision, addressed to the executive director of the commission. The review shall be pursuant to the Administrative Procedure Act.

Source: Laws 2007, LB192, § 8.
Effective date September 1, 2007.

Cross Reference

Administrative Procedure Act, see section 84-920.

85-2108 Rules and regulations. The commission may adopt and promulgate rules and regulations to carry out the Access College Early Scholarship Program Act.

Source: Laws 2007, LB192, § 9.
Effective date September 1, 2007.

ARTICLE 22

COMMUNITY COLLEGE FOUNDATION AND EQUALIZATION AID ACT

Section.

- 85-2201. Act, how cited.
- 85-2202. Community College Foundation and Equalization Aid Fund; created; use; investment.
- 85-2203. Definitions, where found.
- 85-2204. Average revenue remainder allowance, defined.
- 85-2205. Base growth factor, defined.
- 85-2206. Base revenue need, defined.
- 85-2207. Community college area, defined.
- 85-2208. Equalization aid, defined.
- 85-2209. Formula base revenue, defined.
- 85-2210. Full-time equivalent student, defined.
- 85-2211. Local effort rate, defined.
- 85-2212. Prior year revenue, defined.
- 85-2213. Reimbursable educational unit, defined.
- 85-2214. Reimbursable educational unit aid.
- 85-2215. Reimbursable educational unit need.
- 85-2216. Revenue remainder allowance, defined.
- 85-2217. State foundation amount, defined.
- 85-2218. State foundation percentage.
- 85-2219. System foundation aid, defined.
- 85-2220. System foundation need, defined.
- 85-2221. Coordinating Commission for Postsecondary Education; collect and maintain data; community college area; report data.
- 85-2222. Legislature; appropriate funds; legislative intent; Department of Revenue; Department of Administrative Services; duties.
- 85-2223. Department of Revenue; calculate base revenue need.
- 85-2224. Department of Revenue; calculate local effort rate and formula resources.
- 85-2225. Equalization aid; amount.
- 85-2226. Total aid; amount.

- 85-2227. Department of Revenue; certify maximum levy.
 85-2228. Minimum levy aid reduction; applicability.
 85-2229. Director of Administrative Services; pay warrants; procedure.

85-2201 Act, how cited. Sections 85-2201 to 85-2229 shall be known and may be cited as the Community College Foundation and Equalization Aid Act.

Source: Laws 2007, LB342, § 1.
 Operative date July 1, 2007.

85-2202 Community College Foundation and Equalization Aid Fund; created; use; investment. The Community College Foundation and Equalization Aid Fund is created. The fund shall be used to provide state aid to community college areas pursuant to the Community College Foundation and Equalization Aid Act. Any money in the Community College Foundation and Equalization Aid Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2007, LB342, § 2.
 Operative date July 1, 2007.

Cross Reference

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

85-2203 Definitions, where found. For purposes of the Community College Foundation and Equalization Aid Act, the definitions found in sections 85-2204 to 85-2220 apply.

Source: Laws 2007, LB342, § 3.
 Operative date July 1, 2007.

85-2204 Average revenue remainder allowance, defined. Average revenue remainder allowance means the amount calculated pursuant to subdivision (2)(b) of section 85-2223.

Source: Laws 2007, LB342, § 4.
 Operative date July 1, 2007.

85-2205 Base growth factor, defined. Base growth factor means the base limitation described in section 77-3446 minus one-half percent.

Source: Laws 2007, LB342, § 5.
 Operative date July 1, 2007.

85-2206 Base revenue need, defined. Base revenue need means the amount calculated pursuant to section 85-2223.

Source: Laws 2007, LB342, § 6.
Operative date July 1, 2007.

85-2207 Community college area, defined. Community college area has the definition found in section 85-1503.

Source: Laws 2007, LB342, § 7.
Operative date July 1, 2007.

85-2208 Equalization aid, defined. Equalization aid means the amount calculated pursuant to section 85-2225.

Source: Laws 2007, LB342, § 8.
Operative date July 1, 2007.

85-2209 Formula base revenue, defined. Formula base revenue means the base growth factor plus one, times the total prior year revenue for all community college areas.

Source: Laws 2007, LB342, § 9.
Operative date July 1, 2007.

85-2210 Full-time equivalent student, defined. Full-time equivalent student has the definition found in section 85-1503.

Source: Laws 2007, LB342, § 10.
Operative date July 1, 2007.

85-2211 Local effort rate, defined. Local effort rate means the rate applied for the determination of total formula resources pursuant to section 85-2224.

Source: Laws 2007, LB342, § 11.
Operative date July 1, 2007.

85-2212 Prior year revenue, defined. Prior year revenue means the total of general fund property taxes, state aid, and tuition and fees collected in the fiscal year immediately preceding the fiscal year for which aid is being calculated.

Source: Laws 2007, LB342, § 12.
Operative date July 1, 2007.

85-2213 Reimbursable educational unit, defined. Reimbursable educational unit has the definition found in section 85-1503.

Source: Laws 2007, LB342, § 13.
Operative date July 1, 2007.

85-2214 Reimbursable educational unit aid. Reimbursable educational unit aid equals reimbursable educational unit need.

Source: Laws 2007, LB342, § 14.
Operative date July 1, 2007.

85-2215 Reimbursable educational unit need. Reimbursable educational unit need equals the amount calculated in subdivision (2)(d) of section 85-2223.

Source: Laws 2007, LB342, § 15.
Operative date July 1, 2007.

85-2216 Revenue remainder allowance, defined. Revenue remainder allowance means the amount calculated pursuant to subdivision (2)(e) of section 85-2223.

Source: Laws 2007, LB342, § 16.
Operative date July 1, 2007.

85-2217 State foundation amount, defined. State foundation amount means the amount calculated pursuant to subdivision (2)(f) of section 85-2223.

Source: Laws 2007, LB342, § 17.
Operative date July 1, 2007.

85-2218 State foundation percentage. State foundation percentage equals thirty percent.

Source: Laws 2007, LB342, § 18.
Operative date July 1, 2007.

85-2219 System foundation aid, defined. System foundation aid means system foundation need.

Source: Laws 2007, LB342, § 19.
Operative date July 1, 2007.

85-2220 System foundation need, defined. System foundation need means the amount calculated pursuant to subdivision (2)(g) of section 85-2223.

Source: Laws 2007, LB342, § 20.
Operative date July 1, 2007.

85-2221 Coordinating Commission for Postsecondary Education; collect and maintain data; community college area; report data. The Coordinating Commission for Postsecondary Education shall annually collect data from each community college area and maintain such data as necessary to carry out the Community College Foundation and Equalization Aid Act. Each community college area shall annually report data necessary to the commission to carry out the act.

Source: Laws 2007, LB342, § 21.
Operative date July 1, 2007.

85-2222 Legislature; appropriate funds; legislative intent; Department of Revenue; Department of Administrative Services; duties. (1) The Legislature, in an effort to promote quality postsecondary education and to avoid excessive and disproportionate taxation

upon the taxable property of each community college area, may appropriate each biennium from such funds as may be available an amount for aid and assistance to the community colleges. The Legislature recognizes that education, as an investment in human resources, is fundamental to the quality of life and the economic prosperity of Nebraskans and that aid to the community colleges furthers these goals. It is the intent of the Legislature that such appropriations reflect the commitment of the Legislature to join with local governing bodies in a strong and continuing partnership to further advance the quality, responsiveness, access, and equity of Nebraska's community colleges and to foster high standards of performance and service so that every citizen, community, and business will have the opportunity to receive quality educational programs and services regardless of the size, wealth, or geographic location of the community college area or tribally controlled community college as defined in section 85-1503 by which that citizen, community, or business is served. Such funds so appropriated by the Legislature shall be allocated, adjusted, and distributed to the community college boards of governors as provided in the Community College Foundation and Equalization Aid Act.

(2) The Department of Revenue shall certify aid amounts pursuant to the act and report such amounts to the Department of Administrative Services. The Department of Administrative Services shall distribute the total of such appropriated and allocated funds to the boards of governors in ten as nearly as possible equal monthly payments between the fifth and twentieth day of each month beginning in September of each year.

(3) The Department of Administrative Services shall reduce the amount of the distribution to a board of governors by the amount of funds used by the community college area to provide a program or capital construction project as such term is defined in section 85-1402 which has not been approved or has been disapproved by the Coordinating Commission for Postsecondary Education pursuant to the Coordinating Commission for Postsecondary Education Act.

Source: Laws 1975, LB 344, § 16; Laws 1976, LB 903, § 11; Laws 1977, LB 7, § 1; Laws 1977, LB 459, § 12; Laws 1979, LB 363, § 4; Laws 1982, LB 816, § 7; Laws 1984, LB 890, § 2; Laws 1986, LB 258, § 23; Laws 1990, LB 143, § 5; Laws 1991, LB 663, § 48; R.S.Supp.,1992, § 79-2651; Laws 1993, LB 239, § 58; Laws 1995, LB 241, § 2; Laws 1997, LB 269, § 75; Laws 1999, LB 67, § 2; R.S.1943, (1999), § 85-1536; Laws 2007, LB342, § 22.
Operative date July 1, 2007.

Cross Reference

Coordinating Commission for Postsecondary Education Act, see section 85-1401.

85-2223 Department of Revenue; calculate base revenue need. (1) The Department of Revenue shall annually calculate the base revenue need for each community college area as follows:

(a) For fiscal years 2007-08 and 2008-09, base revenue need for each community college area shall equal one plus the base growth factor plus the percentage growth in full-time equivalent enrollments attributable to each community college area times the sum of (i) system foundation need plus (ii) reimbursable educational unit need plus (iii) the average need adjustment plus (iv) the revenue remainder allowance for each community college area; and

(b) For fiscal year 2009-10 and each fiscal year thereafter, base revenue need for each community college area shall equal the sum of (i) system foundation need plus (ii) reimbursable educational unit need plus (iii) the average revenue remainder allowance.

(2) For purposes of the calculation required pursuant to this section:

(a) Average need adjustment shall be calculated for fiscal year 2007-08 aid distribution as follows: Average need adjustment shall equal the sum of average adjusted revenue per full-time equivalent student minus the adjusted revenue per full-time equivalent student times the number of full-time equivalent students attributable to each community college area up to the number of full-time equivalent students attributable to the community college area with the fewest number of full-time equivalent students, except that the amount shall not be less than negative seven hundred fifty thousand or greater than seven hundred fifty thousand. For purposes of the average need adjustment, (i) adjusted revenue per full-time equivalent student equals the sum of the prior year revenue for each community college area minus the system foundation need divided by the number of full-time equivalent students for each community college area and (ii) average adjusted revenue per full-time equivalent student equals the sum of the prior year revenue for all community college areas minus the system foundation need for all areas divided by the number of full-time equivalent students for all areas;

(b) Average revenue remainder allowance shall equal the average revenue remainder per full-time equivalent student times the number of full-time equivalent students for each community college area;

(c) Average revenue remainder per full-time equivalent student equals the revenue remainder allowance for all community college areas divided by the total number of full-time equivalent students in all community college areas;

(d) Reimbursable educational unit need for each community college area equals the product of the state foundation amount times forty percent divided by the total reimbursable educational units of all community college areas times the number of reimbursable educational units attributable to each community college area;

(e) Revenue remainder allowance equals the formula base revenue attributable to each community college area minus the sum of system foundation need plus reimbursable educational unit need;

(f) State foundation amount equals formula base revenue times the state foundation percentage; and

(g) System foundation need for each community college area equals the product of the state foundation amount times sixty percent divided by the number of community college areas.

Source: Laws 2007, LB342, § 23.
Operative date July 1, 2007.

85-2224 Department of Revenue; calculate local effort rate and formula resources. (1) The Department of Revenue shall calculate local effort rate by dividing the sum of (a) the total of base revenue need for all community college areas minus (b) the

amount appropriated by the Legislature pursuant to the Community College Foundation and Equalization Aid Act minus (c) the total formula tuition and fees for all community college areas by the total valuation of all community college areas times one hundred.

(2) The department shall calculate the formula resources available to each community college area by adding (a) the yield from local effort rate plus (b) local formula tuition and fees plus (c) system foundation aid plus (d) reimbursable educational unit aid.

(3) For purposes of the calculation required pursuant to this section:

(a) The yield from local effort rate for each community college area equals the local effort rate times the property valuation attributable to each community college area divided by one hundred;

(b) Local formula tuition and fees equals tuition and fees attributable to each community college area that were collected in the fiscal year prior to the fiscal year for which aid is to be calculated;

(c) Reimbursable educational unit aid equals reimbursable educational unit need calculated pursuant to section 85-2223; and

(d) System foundation aid equals system foundation need calculated pursuant to section 85-2223.

Source: Laws 2007, LB342, § 24.
Operative date July 1, 2007.

85-2225 Equalization aid; amount. Equalization aid for each community college area shall equal base revenue need attributable to the community college area minus formula resources attributable to the community college area.

Source: Laws 2007, LB342, § 25.
Operative date July 1, 2007.

85-2226 Total aid; amount. Total aid for each community college area shall equal the sum of such community college area's equalization aid, system foundation aid, and reimbursable educational unit aid, except that total aid shall not be less than zero.

Source: Laws 2007, LB342, § 26.
Operative date July 1, 2007.

85-2227 Department of Revenue; certify maximum levy. The maximum levy for each community college area shall be certified by the Department of Revenue annually and shall equal one hundred fifteen percent of the local effort rate calculated pursuant to section 85-2224 plus amounts allowed pursuant to subsection (2) of section 85-1517.

Source: Laws 2007, LB342, § 27.
Operative date July 1, 2007.

85-2228 Minimum levy aid reduction; applicability. For fiscal year 2008-09 and for each fiscal year thereafter, a minimum levy aid reduction shall apply to any community college area that does not levy at least eighty percent of the local effort rate calculated pursuant

to section 85-2224 for the fiscal year immediately preceding the fiscal year for which aid is being calculated.

The minimum levy aid reduction shall equal the difference between the amount of revenue collected by the community college area as a result of its levy and the amount of revenue that would have been collected using eighty percent of the local effort rate in the prior fiscal year. The Department of Revenue shall reduce the amount of aid calculated pursuant to section 85-2226 by an amount equal to the minimum levy aid reduction.

Source: Laws 2007, LB342, § 28.
Operative date July 1, 2007.

85-2229 Director of Administrative Services; pay warrants; procedure. The Director of Administrative Services shall, upon notification by the State Treasurer that sufficient funds are available for payment, draw warrants on vouchers presented by the budget division of the Department of Administrative Services against funds appropriated and deliver such warrants to the various community colleges.

Source: Laws 1975, LB 344, § 18; Laws 1976, LB 903, § 12; R.S.1943, (1987), § 79-2653; Laws 1993, LB 239, § 60; R.S.1943, (1999), § 85-1538; Laws 2007, LB342, § 29.
Operative date July 1, 2007.

CHAPTER 86

TELECOMMUNICATIONS AND TECHNOLOGY

Article.

1. Telecommunications Regulation.
 - (b) Regulatory Authority. 86-125.
 - (e) Rates and Charges. 86-140.
3. Universal Service.
 - (a) Telecommunications Relay System. 86-313.
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 - (c) Enhanced Wireless 911 Services. 86-442 to 86-461.
5. Public Technology Infrastructure.
 - (a) Information Technology Infrastructure Act. 86-515.
 - (d) Geographic Information System. 86-570.
 - (i) Network Nebraska. 86-5,100, 86-5,101.

ARTICLE 1

TELECOMMUNICATIONS REGULATION

(b) REGULATORY AUTHORITY

Section.

86-125. Communications providers; registration; requirements; administrative fine.

(e) RATES AND CHARGES

86-140. Access charge regulation.

(b) REGULATORY AUTHORITY

86-125 Communications providers; registration; requirements; administrative fine. Notwithstanding the provisions of section 86-124:

(1) All communications providers providing service in Nebraska shall file a registration form with and pay a registration fee to the Public Service Commission. A communications provider which provides such service prior to August 1, 2007, and which continues to provide such service on and after August 1, 2007, shall register with the commission no later than January 1, 2008. Any communications provider which begins to provide service in Nebraska on or after August 1, 2007, shall register with the commission prior to providing such service;

(2) The commission shall prescribe the registration form to be filed pursuant to this section. Communications providers as defined in subdivision (8)(a) of this section shall provide:

(a) The name, address, telephone number, and email address of a contact person concerning the Nebraska Telecommunications Universal Service Fund Act and related surcharges, if applicable;

(b) The name, address, telephone number, and email address of a contact person concerning the Telecommunications Relay System Act and related surcharges, if applicable;

(c) The name, address, telephone number, and email address of a contact person concerning the Enhanced Wireless 911 Services Act and related surcharges, if applicable; and

(d) The name, address, telephone number, and email address of a contact person concerning consumer complaints and inquiries;

(3) Communications providers as defined in subdivision (8)(b) of this section shall provide the commission with the name, address, telephone number, and email address of a person with managerial responsibility for Nebraska operations;

(4) The communications provider shall submit a registration fee at the time of submission of the registration form. The commission shall set the fee in an amount sufficient to cover the costs of administering the registration process but not to exceed fifty dollars;

(5) The communications provider shall keep the information required by this section current and shall notify the commission of any changes to such information within sixty days after the change;

(6) The commission may administratively fine pursuant to section 75-156 any communications provider which violates this section;

(7) This section applies to all communications providers providing service in Nebraska except for those communications providers otherwise regulated under the Nebraska Telecommunications Regulation Act; and

(8) For purposes of this section, communications provider means any entity that:

(a) Uses telephone numbers or Internet protocol addresses or their functional equivalents or successors to provide information of a user's choosing by aid of wire, cable, wireless, satellite, or other like connection, whether part of a bundle of services or offered separately, (i) which provides or enables real-time or interactive voice communications and (ii) in which the voice component is the primary function; or

(b) Provides any service, whether part of a bundle of services or offered separately, used for transmission of information of a user's choosing regardless of the transmission medium or technology employed, that connects to a network that permits the end user to engage in electronic communications, including, but not limited to, service provided directly (i) to the public or (ii) to such classes of users as to be effectively available directly to the public.

Source: Laws 2002, LB 1211, § 8; Laws 2007, LB661, § 1.
Operative date August 1, 2007.

Cross Reference

Enhanced Wireless 911 Services Act, see section 86-442.

Mobile telecommunications service, taxation, see section 77-2703.04.

Nebraska Telecommunications Universal Service Fund Act, see section 86-316.

Telecommunications Relay System Act, see section 86-301.

(e) RATES AND CHARGES

86-140 Access charge regulation. (1) Access charges imposed by telecommunications companies for access to a local exchange network for interexchange service shall be negotiated by the telecommunications companies involved. Any affected telecommunications company may apply for review of such charges by the commission, or the commission may make a motion to review such charges. Upon such application or motion and unless otherwise agreed to by all parties thereto, the commission shall, upon proper notice, hold and complete a hearing thereon within ninety days of the filing. The commission may, within sixty days after the close of the hearing, enter an order setting access charges which are fair and reasonable. The commission shall set an access charge structure for each local exchange carrier but may order discounts where there is not available access of equal type and quality for all interexchange carriers, except that the commission shall not order access charges which would cause the annual revenue to be realized by the local exchange carrier from all interexchange carriers to be less than the annual costs, as determined by the commission based upon evidence received at hearing, incurred or which will be incurred by the local exchange carrier in providing such access services. Any actions taken pursuant to this subsection shall be substantially consistent with the federal act and federal actions taken under its authority.

(2) Reductions made to access charges pursuant to subsection (1) of this section shall be passed on to the customers of interexchange service carriers in Nebraska whose payment of charges has been reduced. The commission shall have the power and authority to (a) ensure that any access charge reductions made pursuant to subsection (1) of this section are passed on in a manner that is fair and reasonable and (b) review actions taken by any telecommunications company to ensure that this subsection is carried out.

(3) For purposes of this section, access charges means the charges paid by telecommunications companies to local exchange carriers in order to originate and terminate calls using local exchange facilities.

Source: Laws 1963, c. 425, art. VI, § 9, p. 1420; Laws 1982, LB 573, § 1; Laws 1986, LB 835, § 14; Laws 1994, LB 414, § 104; Laws 1999, LB 514, § 2; Laws 2000, LB 1285, § 11; R.S.Supp., 2000, § 75-609; Laws 2002, LB 1105, § 39; Laws 2007, LB661, § 2.
Operative date August 1, 2007.

ARTICLE 3**UNIVERSAL SERVICE**

(a) TELECOMMUNICATIONS RELAY SYSTEM

Section.

86-313. Surcharge; amount; hearing; commission; powers and duties.

(b) NEBRASKA TELECOMMUNICATIONS UNIVERSAL SERVICE FUND ACT
86-316. Act, how cited.

- 86-318. Definitions, where found.
 86-320.01. Telecommunications, defined.
 86-322. Telecommunications company, defined.
 86-323. Legislature; declaration of policy.

(a) TELECOMMUNICATIONS RELAY SYSTEM

86-313 Surcharge; amount; hearing; commission; powers and duties. (1)(a) Each telephone company in Nebraska shall collect from each of the telephone subscribers a surcharge not to exceed twenty cents per month on each telephone number or functional equivalent in Nebraska, including wireless service as defined in section 86-456.01. Except for wireless service, the surcharge shall only be collected on the first one hundred telephone numbers or functional equivalents per subscriber. The companies shall add the surcharge to each subscriber's bill.

(b) The telephone companies are not liable for any surcharge not paid by a subscriber.

(2) Before April 1 of each year, the commission shall hold a public hearing to determine the amount of surcharge necessary to carry out the Telecommunications Relay System Act. After the hearing, the commission shall set the surcharge at the level necessary to fund the statewide telecommunications relay system and the specialized telecommunications equipment program for the following year plus a reasonable reserve. The surcharge shall become effective on July 1 following the change.

(3) In an emergency the commission may adjust the amount of the surcharge to become effective before such date but only after a public hearing for such purpose.

(4) The proceeds from the surcharge shall be remitted to the commission monthly no later than thirty days after the end of the month in which they were collected together with forms provided by the commission. The commission shall remit the funds to the State Treasurer for credit to the fund.

(5) The commission may require an audit of any company collecting the surcharge pursuant to the act.

(6) This section shall not apply to subscribers who have no access to relay service.

Source: Laws 1990, LB 240, § 4; R.S.Supp.,1992, § 86-904; Laws 1993, LB 305, § 27; Laws 1995, LB 146, § 4; R.S.1943, (1999), § 86-1305; Laws 2002, LB 1105, § 191; Laws 2003, LB 187, § 28; Laws 2007, LB661, § 3.
 Operative date April 5, 2007.

(b) NEBRASKA TELECOMMUNICATIONS UNIVERSAL SERVICE FUND ACT

86-316 Act, how cited. Sections 86-316 to 86-329 shall be known and may be cited as the Nebraska Telecommunications Universal Service Fund Act.

Source: Laws 1997, LB 686, § 1; Laws 1999, LB 514, § 4; R.S.1943, (1999), § 86-1401; Laws 2002, LB 1105, § 194; Laws 2007, LB661, § 4.
 Operative date April 5, 2007.

86-318 Definitions, where found. For purposes of the Nebraska Telecommunications Universal Service Fund Act, the definitions found in sections 86-319 to 86-322 apply.

Source: Laws 1997, LB 686, § 3; Laws 2001, LB 389, § 3; R.S.Supp., 2001, § 86-1403; Laws 2002, LB 1105, § 196; Laws 2007, LB661, § 5.
Operative date April 5, 2007.

86-320.01 Telecommunications, defined. Telecommunications means the transmission between or among points specified by the user of information of the user's choosing without change in the form or content of the information as sent and received.

Source: Laws 2007, LB661, § 6.
Operative date April 5, 2007.

86-322 Telecommunications company, defined. Telecommunications company means any natural person, firm, partnership, limited liability company, corporation, or association providing telecommunications or telecommunications service for hire in Nebraska without regard to whether such company holds a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier from the commission.

Source: Laws 2002, LB 1105, § 200; Laws 2007, LB661, § 7.
Operative date April 5, 2007.

86-323 Legislature; declaration of policy. The Legislature declares that it is the policy of the state to preserve and advance universal service based on the following principles:

(1) Quality telecommunications and information services should be available at just, reasonable, and affordable rates;

(2) Access to advanced telecommunications and information services should be provided in all regions of the state;

(3) Consumers in all regions of the state, including low-income consumers and those in rural and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas;

(4) All providers of telecommunications should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service;

(5) There should be specific, predictable, sufficient, and competitively neutral mechanisms to preserve and advance universal service. Funds for the support of high-cost service areas will be available only to the designated eligible telecommunications companies providing service to such areas. Funds for the support of low-income customers, schools, libraries, and providers of health care to rural areas will be available to any entity providing telecommunications services, maintenance, and upgrading of facilities. The distribution of universal service funds should encourage the continued development and maintenance of telecommunications infrastructure;

(6) Elementary and secondary schools, libraries, and providers of health care to rural areas should have access to advanced telecommunications services as described in the Telecommunications Act of 1996. To promote the efficient use of facilities in rural areas, universal service rules should not preclude the sharing of facilities supported by universal service funds with other local users, if such ineligible users pay appropriate retail usage rates to the telecommunications company;

(7) The implicit support mechanisms in intrastate access rates throughout the state may be replaced while ensuring that local service rates in all areas of the state remain affordable; and

(8) The costs of administration of the Nebraska Telecommunications Universal Service Fund should be kept to a minimum.

Source: Laws 1997, LB 686, § 4; R.S.1943, (1999), § 86-1404; Laws 2002, LB 1105, § 201; Laws 2007, LB661, § 8.
Operative date April 5, 2007.

ARTICLE 4

PUBLIC SAFETY SYSTEMS

(a) NEBRASKA PUBLIC SAFETY COMMUNICATION SYSTEM ACT

Section.

86-417.01. Repealed. Laws 2007, LB 322, § 42.

86-417.02. Repealed. Laws 2007, LB 322, § 42.

(b) EMERGENCY TELEPHONE COMMUNICATIONS SYSTEMS

86-420. Act, how cited.

86-422. Definitions, where found.

86-427. Repealed. Laws 2007, LB 661, § 30.

86-429.01. Primary place of use, defined.

86-433. Service surcharge, defined.

86-434. Service user, defined.

86-435. 911 service; costs; surcharges authorized; additional increase; when; agreement by governing bodies; use.

86-436. Surcharges; service user; service supplier; duties; collection.

(c) ENHANCED WIRELESS 911 SERVICES

86-442. Act, how cited.

86-443. Definitions, where found.

86-443.01. Repealed. Laws 2007, LB 661, § 30.

86-449.01. Home service provider, defined.

86-450.01. Repealed. Laws 2007, LB 661, § 30.

86-450.02. Prepaid wireless service, defined.

86-450.03. Primary place of use, defined.

86-456. Wireless carrier, defined.

- 86-456.01. Wireless service, defined.
- 86-457. Surcharge; commission; duties; applicability of section.
- 86-459. Wireless carrier; duties; administrative fine.
- 86-461. Enhanced Wireless 911 Advisory Board; created; members; expenses.

(a) NEBRASKA PUBLIC SAFETY COMMUNICATION SYSTEM ACT

86-417.01 Repealed. Laws 2007, LB 322, § 42.

86-417.02 Repealed. Laws 2007, LB 322, § 42.

(b) EMERGENCY TELEPHONE COMMUNICATIONS SYSTEMS

86-420 Act, how cited. Sections 86-420 to 86-441.01 shall be known and may be cited as the Emergency Telephone Communications Systems Act.

Source: Laws 2002, LB 1105, § 221; Laws 2005, LB 516, § 1; Laws 2006, LB 1222, § 1; Laws 2007, LB661, § 9.
Operative date April 5, 2007.

86-422 Definitions, where found. For purposes of the Emergency Telephone Communications Systems Act, the definitions found in sections 86-423 to 86-434 apply.

Source: Laws 1990, LB 240, § 8; Laws 1991, LB 133, § 1; Laws 1993, LB 305, § 30; R.S.1943, (1999), § 86-1002; Laws 2002, LB 1105, § 223; Laws 2007, LB661, § 10.
Operative date April 5, 2007.

86-427 Repealed. Laws 2007, LB 661, § 30.

86-429.01 Primary place of use, defined. Primary place of use means the residential or business street address that is representative of the primary location of the customer's use of a service that includes the provision of 911 service.

Source: Laws 2007, LB661, § 11.
Operative date April 5, 2007.

86-433 Service surcharge, defined. Service surcharge means a charge set by a governing body and assessed on each telephone number or functional equivalent of service users whose primary place of use is within the governing body's designated 911 service area, with the exception of those service users served by wireless carriers as defined in section 86-456 and those service users who have no access to 911 service.

Source: Laws 2002, LB 1105, § 234; Laws 2007, LB661, § 12.
Operative date April 5, 2007.

86-434 Service user, defined. Service user means any person who is provided 911 service in this state.

Source: Laws 2002, LB 1105, § 235; Laws 2007, LB661, § 13.
Operative date April 5, 2007.

86-435 911 service; costs; surcharges authorized; additional increase; when; agreement by governing bodies; use. (1) A governing body may incur any nonrecurring or recurring charges for the installation, maintenance, and operation of 911 service and shall pay such costs out of general funds which may be supplemented by funds from the imposition of a service surcharge. A governing body incurring costs for 911 service may impose a uniform service surcharge of up to fifty cents per month on each telephone number or functional equivalent of service users whose primary place of use is within the governing body's 911 service area, except for those service users served by wireless carriers as defined in section 86-456 and those service users who have no access to 911 service. The initial service surcharge may be imposed at any time subsequent to the execution of an agreement for 911 service with a service supplier.

(2) Except in a county containing a city of the metropolitan class, such uniform service surcharge in subsection (1) of this section may be increased by an additional amount not to exceed fifty cents per month. Such additional increase shall be made only after:

(a) Publication of notices for a public hearing. Such notices shall:

(i) Be published at least once a week for three consecutive weeks in a legal newspaper published or of general circulation in the areas affected;

(ii) Set forth the time, place, and date of such public hearing; and

(iii) Set forth the purpose of the public hearing and the purpose of the increase; and

(b) A public hearing is held pursuant to such notices.

(3) If 911 service is to be provided for a territory which is included in whole or in part in the jurisdiction of two or more governing bodies, the agreement for such service shall be entered into by each such governing body unless any such governing body expressly excludes itself from the agreement. Such an agreement shall provide that each governing body which is a customer of 911 service will pay for its portion of the service. Nothing in this subsection shall be construed to prevent two or more governing bodies from entering into a contract which establishes a separate legal entity for the purpose of entering into such an agreement as the customer of the service supplier or any supplier of equipment for 911 service.

(4) If a governing body's 911 service area includes a local exchange area which intersects governmental boundary lines, the affected governmental units may cooperate to provide 911 service through an agreement as provided in the Interlocal Cooperation Act or the Joint Public Agency Act. The agreement shall provide for the assessment of a uniform service surcharge within a governing body's 911 service area. The service surcharge on each telephone number or functional equivalent of service users whose primary place of use is within the governing body's 911 service area, except for those service users served by wireless carriers as defined in section 86-456 and those service users who have no access to 911 service, shall be the same as the amount allowed in subsections (1) and (2) of this section.

(5) Funds generated by the service surcharge shall be expended only for the purchase, installation, maintenance, and operation of telecommunications equipment and telecommunications-related services required for the provision of 911 service.

Source: Laws 1990, LB 240, § 9; Laws 1991, LB 133, § 2; Laws 1994, LB 1044, § 1; Laws 1997, LB 37, § 1; R.S.1943, (1999), § 86-1003; Laws 2002, LB 1105, § 236; Laws 2007, LB661, § 14.
Operative date April 5, 2007.

Cross Reference

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

86-436 Surcharges; service user; service supplier; duties; collection. (1) A service user shall pay service surcharges in each 911 service area where the service user has its primary place of use and receives 911 service, except that an individual service user shall not be required to pay on a single periodic billing service surcharges on more than one hundred telephone numbers or functional equivalents in any single 911 service area. Every service user shall be liable for any service surcharge billed to such user until the surcharge has been paid to the service supplier.

(2) The duty of a service supplier to bill a service surcharge to a service user shall commence at such time as may be specified by the governing body. A service surcharge shall be collected as far as practicable at the same time as and along with the charges for service in accordance with the regular billing practice of the service supplier.

(3) A service supplier shall have no obligation to take any legal action to enforce the collection of any service surcharge imposed pursuant to section 86-435. Such action may be brought by or on behalf of the governing body imposing the charge or the separate legal entity formed pursuant to such section. A service supplier shall annually provide the governing body a list of the amounts uncollected along with the names and addresses of those service users who carry a balance that can be determined by the service supplier to be for nonpayment of any service surcharge. The service supplier shall not be liable for such uncollected amounts.

Source: Laws 1990, LB 240, § 10; R.S.1943, (1999), § 86-1004; Laws 2002, LB 1105, § 237; Laws 2007, LB661, § 15.
Operative date April 5, 2007.

(c) ENHANCED WIRELESS 911 SERVICES

86-442 Act, how cited. Sections 86-442 to 86-470 shall be known and may be cited as the Enhanced Wireless 911 Services Act.

Source: Laws 2002, LB 1105, § 243; Laws 2003, LB 187, § 29; Laws 2006, LB 1222, § 3; Laws 2007, LB661, § 16.
Operative date July 1, 2007.

86-443 Definitions, where found. For purposes of the Enhanced Wireless 911 Services Act, the definitions found in sections 86-444 to 86-456.01 apply.

Source: Laws 2001, LB 585, § 1; R.S.Supp.,2001, § 86-2201; Laws 2002, LB 1105, § 244; Laws 2006, LB 1222, § 4; Laws 2007, LB661, § 17.
Operative date July 1, 2007.

86-443.01 Repealed. Laws 2007, LB 661, § 30.

86-449.01 Home service provider, defined. Home service provider means a telecommunications company as defined in section 86-322 that has contracted with a customer to provide wireless service.

Source: Laws 2007, LB661, § 18.
Operative date July 1, 2007.

86-450.01 Repealed. Laws 2007, LB 661, § 30.

86-450.02 Prepaid wireless service, defined. Prepaid wireless service means a wireless service for which the user pays prospectively and for which the wireless carrier does not have an ongoing monthly billing relationship with the user of such service.

Source: Laws 2007, LB661, § 19.
Operative date July 1, 2007.

86-450.03 Primary place of use, defined. Primary place of use means: (1) For users of wireless service other than prepaid wireless service, the street address representative of where the use of wireless service primarily occurs. The place of primary use shall be the residential street address or the primary business street address of the user of the wireless service and shall be within the service area of the home service provider; and (2) for users of prepaid wireless service, the location associated with the telephone number assigned to the user.

Source: Laws 2007, LB661, § 20.
Operative date July 1, 2007.

86-456 Wireless carrier, defined. Wireless carrier means (1) any carrier of mobile service as referenced in 47 U.S.C. 153(27), as such section existed on January 1, 2007, (2) any carrier of commercial mobile service as referenced in 47 U.S.C. 332(d)(1), as such section existed on January 1, 2007, (3) any carrier of commercial mobile radio service as referenced in 47 C.F.R. 20.9, as such regulation existed on January 1, 2007, or (4) any cellular radiotelephone service, licensees of a personal communications service, and specialized mobile radio services as referenced in 47 C.F.R. 20.9, as such regulation existed on January 1, 2007.

Source: Laws 2002, LB 1105, § 257; Laws 2006, LB 1222, § 7; Laws 2007, LB661, § 21.
Operative date July 1, 2007.

86-456.01 Wireless service, defined. Wireless service means: (1) Any mobile service as defined in 47 U.S.C. 153 and 47 C.F.R. 27.4, as such section and regulation existed on

January 1, 2007; (2) any commercial mobile service as defined in 47 U.S.C. 332(d), as such section existed on January 1, 2007; or (3) any commercial mobile radio service as referenced in 47 C.F.R. 20.9, as such regulation existed on January 1, 2007.

Source: Laws 2007, LB661, § 22.
Operative date July 1, 2007.

86-457 Surcharge; commission; duties; applicability of section. (1) Each wireless carrier shall collect:

(a) A surcharge of up to seventy cents, except as provided in subdivision (1)(b) of this subsection and as otherwise provided in this section with respect to prepaid wireless service, on all active telephone numbers or functional equivalents every month from users of wireless service and shall remit the surcharge in accordance with section 86-459; or

(b) A surcharge of up to fifty cents, except as otherwise provided in this section with respect to prepaid wireless service, on all active telephone numbers or functional equivalents every month from users of wireless service whose primary place of use is in a county containing a city of the metropolitan class and shall remit the surcharge in accordance with section 86-459.

The wireless carrier is not liable for any surcharge not paid by a customer.

(2) Except as otherwise provided in this section, the wireless carrier shall add the surcharge to each user's billing statement. The surcharge shall appear as a separate line-item charge on the user's billing statement and shall be labeled as "Enhanced Wireless 911 Surcharge" or a reasonable abbreviation of such phrase.

(3) If a wireless carrier, except as otherwise provided in this section, resells its service through other entities, each reseller shall collect the surcharge from its customers and shall remit the surcharge in accordance with section 86-459.

(4) It is the intent of the Legislature that, effective July 1, 2007, all users of prepaid wireless services pay an amount comparable to the amount paid by users of wireless services that are not prepaid in support of statewide wireless enhanced 911 service. It is also the intent of the Legislature that whenever possible such amounts be collected from the users of such prepaid wireless services.

(5) The commission shall establish surcharges comparable to the surcharge assessed on other users of wireless services and shall develop methods for collection and remittance of such surcharges from wireless carriers offering prepaid wireless services.

(6) The duty to remit any surcharges established pursuant to subsection (5) of this section is the responsibility of the wireless carrier.

(7) This section shall not apply to users who have no 911 service.

Source: Laws 2001, LB 585, § 2; R.S.Supp., 2001, § 86-2202; Laws 2002, LB 1105, § 258; Laws 2003, LB 187, § 31; Laws 2006, LB 1222, § 8; Laws 2007, LB661, § 23.
Operative date July 1, 2007.

86-459 Wireless carrier; duties; administrative fine. (1) Each wireless carrier shall remit monthly to the commission the amounts collected pursuant to section 86-457 together with any forms required by the commission no later than sixty days after the last day of the

month. The commission shall remit the funds to the State Treasurer for credit to the Enhanced Wireless 911 Fund.

(2) As the commission may require, each wireless carrier shall report to the commission on a quarterly basis for each county in a manner prescribed by the commission the following information: (a) The number of telephone numbers or functional equivalents served; (b) the telephone numbers or functional equivalents from which it has collected surcharge revenue; (c) the number of wireless towers by county; and (d) the current implementation status of enhanced wireless 911 service in each county served by that wireless carrier.

(3) The wireless carrier shall maintain all records required by this section, records of the amounts collected pursuant to section 86-457, and remittance records for a period of five years after the date of remittance to the fund. The commission may require an audit of any wireless carrier's books and records concerning the collection and remittance of any amounts collected pursuant to the Enhanced Wireless 911 Services Act. The costs of any audit required by the commission shall, at the commission's discretion, be paid by the audited wireless carrier. A wireless carrier shall not be required to pay for more than one remittance audit or more than one collection audit per year, unless the commission orders subsequent audits for good cause.

(4) Each wireless carrier shall comply with all commission rules and regulations regarding enhanced wireless 911 service.

(5) Each wireless carrier shall comply with this section regardless of whether the wireless carrier receives reimbursement from the fund. Wireless carriers failing to comply with this section may be administratively fined by the commission pursuant to section 75-156.

Source: Laws 2001, LB 585, § 4; R.S.Supp., 2001, § 86-2204; Laws 2002, LB 1105, § 260; Laws 2006, LB 1222, § 9; Laws 2007, LB661, § 24.
Operative date April 5, 2007.

86-461 Enhanced Wireless 911 Advisory Board; created; members; expenses. (1)

The Enhanced Wireless 911 Advisory Board is created to advise the commission concerning the implementation, development, administration, coordination, evaluation, and maintenance of enhanced wireless 911 service. The advisory board shall be composed of nine individuals appointed by the Governor, including:

- (a) One sheriff;
- (b) Two county officials or employees;
- (c) Two municipal officials or employees;
- (d) One representative from the state's wireless telecommunications industry;
- (e) One manager of a public safety answering point not employed by a sheriff;
- (f) One representative of the state's local exchange telecommunications service industry;

and

- (g) One member of the public.
- (2) The advisory board shall also include two ex officio members:
- (a) One commissioner from the Public Service Commission or his or her designee; and
 - (b) The Chief Information Officer or his or her designee.

(3) Members of the board as described in subdivisions (1)(a) through (1)(g) of this section shall be appointed for a term of three years. Each succeeding member of the board shall be appointed for a term of three years. The board shall meet as often as necessary to carry out its duties. Members of the board shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 2001, LB 585, § 6; R.S.Supp., 2001, § 86-2206; Laws 2002, LB 1105, § 262; Laws 2006, LB 921, § 14; Laws 2007, LB661, § 25.
Operative date April 5, 2007.

ARTICLE 5

PUBLIC TECHNOLOGY INFRASTRUCTURE

(a) INFORMATION TECHNOLOGY INFRASTRUCTURE ACT

Section.

86-515. Nebraska Information Technology Commission; created; members; expenses; executive director.

(d) GEOGRAPHIC INFORMATION SYSTEM

86-570. Geographic Information System Steering Committee; created; members; appointment; terms; expenses.

(i) NETWORK NEBRASKA

86-5,100. Network Nebraska; development and maintenance; access; Chief Information Officer; duties; cost.

86-5,101. State Department of Education; provide funding for Network Nebraska; use; repayment; applications; contents; denial; appeal.

(a) INFORMATION TECHNOLOGY INFRASTRUCTURE ACT

86-515 Nebraska Information Technology Commission; created; members; expenses; executive director. (1) The Nebraska Information Technology Commission is created. The commission shall consist of (a) one member representing elementary and secondary education, (b) one member representing postsecondary education, (c) the Governor or his or her designee, (d) one member representing communities, and (e) five members representing the general public who have experience in developing strategic plans and making high-level business decisions. At any time that there is not a member of the Educational Service Unit Coordinating Council serving on the Nebraska Information Technology Commission, the technical panel established pursuant to section 86-521, or any working groups established pursuant to sections 86-512 to 86-524 that establish, coordinate, or prioritize needs for education, the Governor shall appoint to the commission one member who serves on the Educational Service Unit Coordinating Council.

(2) The Governor or a designee of the Governor shall serve as chairperson of the commission.

(3) The members of the commission shall be appointed by the Governor with the approval of a majority of the Legislature. Members of the commission shall serve for terms of four years,

except that two members initially appointed to represent the general public shall be appointed for a term of two years and any member appointed to represent the Educational Service Unit Coordinating Council shall be appointed for a term of one year. Members shall be limited to two consecutive terms. The Governor or his or her designee shall serve on the commission for his or her term. Each member shall serve until the appointment and qualification of his or her successor. In case of a vacancy occurring prior to the expiration of the term of a member, the appointment shall be made only for the remainder of the term.

(4) Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(5) The commission may employ or designate an executive director to provide administrative and operational support for the commission. The Department of Administrative Services and Nebraska Educational Telecommunications Commission shall assist with administrative and operational support for the Nebraska Information Technology Commission as necessary to carry out its duties.

Source: Laws 1998, LB 924, § 5; R.S.1943, (1999), § 86-1505; Laws 2002, LB 1105, § 285; Laws 2006, LB 1208, § 27; Laws 2007, LB603, § 32.
Operative date July 1, 2008.

(d) GEOGRAPHIC INFORMATION SYSTEM

86-570 Geographic Information System Steering Committee; created; members; appointment; terms; expenses. (1) The Geographic Information System Steering Committee is hereby created and shall consist of nineteen members as follows:

(a) The Chief Information Officer or his or her designee and the director or designee of the Department of Environmental Quality, the Department of Health and Human Services, the Conservation and Survey Division of the University of Nebraska, the Department of Natural Resources, and the Governor's Policy Research Office;

(b) The Director-State Engineer or designee;

(c) The State Surveyor or designee;

(d) The Clerk of the Legislature or designee;

(e) The secretary of the Game and Parks Commission or designee;

(f) The Property Tax Administrator or designee;

(g) One representative of federal agencies appointed by the Governor;

(h) One representative of the natural resources districts nominated by the Nebraska Association of Resources Districts and appointed by the Governor;

(i) One representative of the public power districts appointed by the Governor;

(j) Two representatives of the counties nominated by the Nebraska Association of County Officials and appointed by the Governor;

(k) One representative of the municipalities nominated by the League of Nebraska Municipalities and appointed by the Governor; and

(l) Two members at large appointed by the Governor.

(2) The appointed members shall serve for terms of four years, except that of the initial members appointed by the Governor, one of the representatives of the counties shall be appointed for one year and the other shall be appointed for three years, one of the members at large shall be appointed for one year and the other for three years, and the representative of the public power districts shall be appointed for two years. Their successors shall be appointed for four-year terms. Any vacancy on the committee shall be filled in the same manner as the original appointment, and the person selected to fill such vacancy shall have the same qualifications as the member whose vacancy is being filled.

(3) The members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1991, LB 639, § 2; Laws 1993, LB 3, § 72; Laws 1998, LB 924, § 48; Laws 1999, LB 594, § 71; Laws 2000, LB 900, § 250; R.S.Supp.,2000, § 81-2602; Laws 2002, LB 1105, § 340; Laws 2006, LB 921, § 28; Laws 2007, LB296, § 812.
Operative date July 1, 2007.

(i) NETWORK NEBRASKA

86-5,100 Network Nebraska; development and maintenance; access; Chief Information Officer; duties; cost. The Chief Information Officer, in partnership with the University of Nebraska, shall develop and maintain a statewide, multipurpose, high capacity, scalable telecommunications network to be called Network Nebraska. The network shall consist of contractual arrangements with providers to meet the demand of state agencies, local governments, and educational entities as defined in section 79-1201.01. Such network shall provide access to a reliable and affordable infrastructure capable of carrying a spectrum of services and applications, including distance education, across the state. The Chief Information Officer shall provide access to each school district, each educational service unit, each community college, each state college, and the University of Nebraska at the earliest feasible date and no later than July 1, 2012. Access may be provided through educational service units or other aggregation points. The Chief Information Officer shall aggregate demand for those state agencies and educational entities choosing to participate and shall reduce costs for participants whenever feasible. The Chief Information Officer shall establish a cost structure based on actual costs plus administrative expenses and shall charge participants according to such cost structure.

Source: Laws 2006, LB 1208, § 30; Laws 2007, LB603, § 33.
Operative date July 1, 2008.

86-5,101 State Department of Education; provide funding for Network Nebraska; use; repayment; applications; contents; denial; appeal. (1) For fiscal years 2007-08 through 2009-10, the State Department of Education shall provide temporary funding for aggregation routing equipment and network transport costs for Network Nebraska to the Chief Information Officer from the School District Reorganization Fund as provided in this section. Such temporary funding shall be for the purchase of aggregation routing equipment, installation costs for such equipment, and network transport for Network Nebraska and

shall be repaid to the Education Innovation Fund on or before June 30, 2010, by the Chief Information Officer from funds collected for the administration of Network Nebraska. The total temporary funding provided pursuant to this section shall be limited to two hundred thousand dollars. Applications jointly submitted by the Chief Information Officer and the University of Nebraska shall be accepted by the department beginning on May 31, 2007. Applications shall be on a form specified by the department and shall include a description of the aggregation routing equipment to be purchased, a description of how the aggregation routing equipment will be used for distance education, the network transport costs to be supported, and a timeline for repayment to the School District Reorganization Fund. Late repayments shall accrue interest at the rate prescribed in section 45-104.02 from the date of the initial receipt of temporary funding.

(2) The Chief Information Officer or the University of Nebraska may appeal the denial of temporary funding for aggregation routing equipment and network transport costs for Network Nebraska or the assessment of interest to the State Board of Education. The board shall allow a representative of the Chief Information Officer or the University of Nebraska an opportunity to present information concerning the appeal to the board at the first board meeting after the filing of such appeal. If the board finds that the department denied the temporary funding in error, the department shall pay the Chief Information Officer from the School District Reorganization Fund as soon as practical the amount which was denied in error. If the board finds that the department erred in assessing interest, such assessment of interest shall be corrected.

(3) The State Board of Education may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2007, LB603, § 34.
Operative date May 31, 2007.

CHAPTER 90

SPECIAL ACTS

Article.

5. Appropriations. 90-528 to 90-530.

ARTICLE 5

APPROPRIATIONS

Section.

- 90-528. Repealed. Laws 2007, LB 2, § 1.
90-529. Repealed. Laws 2007, LB 2, § 1.
90-530. Repealed. Laws 2007, LB 2, § 1.

90-528 Repealed. Laws 2007, LB 2, § 1.

90-529 Repealed. Laws 2007, LB 2, § 1.

90-530 Repealed. Laws 2007, LB 2, § 1.

UNIFORM COMMERCIAL CODE

Article.

9. Secured Transactions.

Part 3. Perfection and Priority.

Subpart 2. Perfection. 9-315.

Subpart 3. Priority. 9-320.

Part 5. Filing.

Subpart 2. Duties and Operation of Filing Office. 9-529, 9-531.

ARTICLE 9 SECURED TRANSACTIONS

Part 3 PERFECTION AND PRIORITY Subpart 2 PERFECTION

Section.

9-315. Secured party's rights on disposition of collateral and in proceeds.

Subpart 3 PRIORITY

9-320. Buyer of goods.

Part 5 FILING Subpart 2

DUTIES AND OPERATION OF FILING OFFICE

9-529. Secretary of State; implementation of centralized computer system.

9-531. Uniform Commercial Code Cash Fund; created; use; Secretary of State; duties; fees.

Part 3 PERFECTION AND PRIORITY Subpart 2 PERFECTION

9-315. Secured party's rights on disposition of collateral and in proceeds. (a)(1)
Except as otherwise provided in this article and in section 2-403(2):

(A) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the

disposition free of the security interest or agricultural lien; and

(B) a security interest attaches to any identifiable proceeds of collateral.

(2) Authorization to sell, lease, license, exchange, or otherwise dispose of farm products shall not be implied or otherwise result, nor shall a security interest in farm products be considered to be waived, modified, released, or terminated if such disposition is conditioned upon the secured party's receipt of proceeds or from any course of conduct, course of performance, or course of dealing between the parties or by any usage of trade in any case in which (A) the secured party has filed an effective financing statement in accordance with the provisions of sections 52-1301 to 52-1322, Reissue Revised Statutes of Nebraska, or (B) the buyer of farm products has received notice from the secured party or the seller of farm products in accordance with the provisions of 7 U.S.C. 1631(e)(1)(A), unless the buyer has secured a waiver or release of the security interest specified in such effective financing statement or notice from the secured party.

(b) Proceeds that are commingled with other property are identifiable proceeds:

(1) if the proceeds are goods, to the extent provided by section 9-336; and

(2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.

(c) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

(1) the following conditions are satisfied:

(A) a filed financing statement covers the original collateral;

(B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) the proceeds are not acquired with cash proceeds;

(2) the proceeds are identifiable cash proceeds; or

(3) the security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within twenty days thereafter.

(e) If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subdivision (d)(1) becomes unperfected at the later of:

(1) when the effectiveness of the filed financing statement lapses under section 9-515 or is terminated under section 9-513; or

(2) the twenty-first day after the security interest attaches to the proceeds.

Source: Laws 1999, LB 550, § 108; Laws 2003, LB 4, § 6; Laws 2007, LB124, § 70.
Operative date September 1, 2007.

COMMENT

1. **Source.** Former section 9-306.

2. **Continuation of Security Interest or Agricultural Lien Following Disposition of Collateral.** Subsection (a)(1)(A), which derives from former section 9-306(2), contains the general rule that a security interest survives disposition of the collateral. In these cases, the secured party may repossess the collateral from the transferee or, in an appropriate case, maintain an action for conversion. The secured party may claim both any proceeds and the original collateral but, of course, may have only one satisfaction.

In many cases, a purchaser or other transferee of collateral will take free of a security interest, and the secured party's only right will be to proceeds. For example, the general rule does not apply, and a security interest does not continue in collateral, if the secured party authorized the disposition, in the agreement that contains the security agreement or otherwise. Subsection (a)(1)(A) adopts the view of PEB Commentary No. 3 and makes explicit that the authorized disposition to which it refers is an authorized disposition "free of" the security interest or agricultural lien. The secured party's right to proceeds under this section or under the express terms of an agreement does not in itself constitute an authorization of disposition. The change in language from former section 9-306(2) is not intended to address the frequently litigated situation in which the effectiveness of the secured party's consent to a disposition is conditioned upon the secured party's receipt of the proceeds. In that situation, subsection (a) leaves the determination of authorization to the courts, as under former article 9.

This article contains several provisions under which a transferee takes free of a security interest or agricultural lien. For example, section 9-317 states when transferees take free of unperfected security interests; sections 9-320 and 9-321 on goods, 9-321 on general intangibles, 9-330 on chattel paper and instruments, and 9-331 on negotiable instruments, negotiable documents, and securities state when purchasers of such collateral take free of a security interest, even though perfected and even though the disposition was not authorized. Section 9-332 enables most transferees (including nonpurchasers) of funds from a deposit account and most transferees of money to take free of a perfected security interest in the deposit account or money.

Likewise, the general rule that a security interest survives disposition does not apply if the secured party entrusts goods collateral to a merchant who deals in goods of that kind and the merchant sells the collateral to a buyer in ordinary course of business. Section

2-403(2) gives the merchant the power to transfer all the secured party's rights to the buyer, even if the sale is wrongful as against the secured party. Thus, under subsection (a)(1)(A), an entrusting secured party runs the same risk as any other entruster.

3. **Secured Party's Right to Identifiable Proceeds.** Under subsection (a)(1)(B), which derives from former section 9-306(2), a security interest attaches to any identifiable "proceeds", as defined in section 9-102. See also section 9-203(f). Subsection (b) is new. It indicates when proceeds commingled with other property are identifiable proceeds and permits the use of whatever methods of tracing other law permits with respect to the type of property involved. Among the "equitable principles" whose use other law may permit is the "lowest intermediate balance rule". See Restatement (2d), Trusts section 202.

4. **Automatic Perfection in Proceeds: General Rule.** Under subsection (c), a security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected. This article extends the period of automatic perfection in proceeds from 10 days to 20 days. Generally, a security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds. See subsection (d). The loss of perfected status under subsection (d) is prospective only. Compare, e.g., section 9-515(c) (deeming security interest unperfected retroactively).

5. **Automatic Perfection in Proceeds: Proceeds Acquired with Cash Proceeds.** Subsection (d)(1) derives from former section 9-306(3)(a). It carries forward the basic rule that a security interest in proceeds remains perfected beyond the period of automatic perfection if a filed financing statement covers the original collateral (e.g., inventory) and the proceeds are collateral in which a security interest may be perfected by filing in the office where the financing statement has been filed (e.g., equipment). A different rule applies if the proceeds are acquired with cash proceeds, as is the case if the original collateral (inventory) is sold for cash (cash proceeds) that is used to purchase equipment (proceeds). Under these circumstances, the security interest in the equipment proceeds remains perfected only if the description in the filed financing statement indicates the type of property constituting the proceeds (e.g., "equipment").

This section reaches the same result but takes a different approach. It recognizes that the treatment of proceeds acquired with cash proceeds under former section 9-306(3)(a) essentially was superfluous. In the example, had the filing covered "equipment" as well as "inventory", the security interest in the proceeds would

have been perfected under the usual rules governing after-acquired equipment (see former sections 9-302 and 9-303); paragraph (3)(a) added only an exception to the general rule. Subsection (d)(1)(C) of this section takes a more direct approach. It makes the general rule of continued perfection inapplicable to proceeds acquired with cash proceeds, leaving perfection of a security interest in those proceeds to the generally applicable perfection rules under subsection (d)(3).

Example 1: Lender perfects a security interest in Debtor's inventory by filing a financing statement covering "inventory". Debtor sells the inventory and deposits the buyer's check into a deposit account. Debtor draws a check on the deposit account and uses it to pay for equipment. Under the "lowest intermediate balance rule", which is a permitted method of tracing in the relevant jurisdiction, see comment 3, the funds used to pay for the equipment were identifiable proceeds of the inventory. Because the proceeds (equipment) were acquired with cash proceeds (deposit account), subsection (d)(1) does not extend perfection beyond the 20-day automatic period.

Example 2: Lender perfects a security interest in Debtor's inventory by filing a financing statement covering "all debtor's property". As in example 1, Debtor sells the inventory, deposits the buyer's check into a deposit account, draws a check on the deposit account, and uses the check to pay for equipment. Under the "lowest intermediate balance rule", which is a permitted method of tracing in the relevant jurisdiction, see comment 3, the funds used to pay for the equipment were identifiable proceeds of the inventory. Because the proceeds (equipment) were acquired with cash proceeds (deposit account), subsection (d)(1) does not extend perfection beyond the 20-day automatic period. However, because the financing statement is sufficient to perfect a security interest in debtor's equipment, under subsection (d)(3) the security interest in the equipment proceeds remains perfected beyond the 20-day period.

6. Automatic Perfection in Proceeds: Lapse or Termination of Financing Statement During 20-Day Period; Perfection Under Other Statute or Treaty. Subsection (e) provides that a security interest in proceeds perfected under subsection (d)(1) ceases to be perfected when the financing statement covering the original collateral lapses or is terminated. If the lapse or termination occurs before the 21st day after the security interest attaches, however, the security interest in the proceeds remains perfected until the 21st day. Section 9-311(b) provides that compliance with the perfection requirements of a statute or treaty described

in section 9-311(a) "is equivalent to the filing of a financing statement". It follows that collateral subject to a security interest perfected by such compliance under section 9-311(b) is covered by a "filed financing statement" within the meaning of section 9-315(d) and (e).

7. Automatic Perfection in Proceeds: Continuation of Perfection in Cash Proceeds. Former section 9-306(3)(b) provided that if a filed financing statement covered original collateral, a security interest in identifiable cash proceeds of the collateral remained perfected beyond the ten-day period of automatic perfection. Former section 9-306(3)(c) contained a similar rule with respect to identifiable cash proceeds of investment property. Subsection (d)(2) extends the benefits of former sections 9-306(3)(b) and (3)(c) to identifiable cash proceeds of all types of original collateral in which a security interest is perfected by any method. Under subsection (d)(2), if the security interest in the original collateral was perfected, a security interest in identifiable cash proceeds will remain perfected indefinitely, regardless of whether the security interest in the original collateral remains perfected. In many cases, however, a purchaser or other transferee of the cash proceeds will take free of the perfected security interest. See, e.g., sections 9-330(d) (purchaser of check), 9-331 (holder in due course of check), and 9-332 (transferee of money or funds from a deposit account).

8. Insolvency Proceedings; Returned and Repossessed Goods. This article deletes former section 9-306(4), which dealt with proceeds in insolvency proceedings. Except as otherwise provided by the Bankruptcy Code, the debtor's entering into bankruptcy does not affect a secured party's right to proceeds.

This article also deletes former section 9-306(5), which dealt with returned and repossessed goods. Section 9-330, comments 9 to 11, explain and clarify the application of priority rules to returned and repossessed goods as proceeds of chattel paper.

9. Proceeds of Collateral Subject to Agricultural Lien. This article does not determine whether a lien extends to proceeds of farm products encumbered by an agricultural lien. If, however, the proceeds are themselves farm products on which an "agricultural lien" (defined in section 9-102) arises under other law, then the agricultural lien provisions of this article apply to the agricultural lien on the proceeds in the same way in which they would apply had the farm products not been proceeds.

Subpart 3
PRIORITY

9-320. Buyer of goods. (a) Except as otherwise provided in subsection (e), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence. A buyer of farm products may be subject to a security interest under sections 52-1301 to 52-1322, Reissue Revised Statutes of Nebraska.

(b) Except as otherwise provided in subsection (e), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

- (1) without knowledge of the security interest;
- (2) for value;
- (3) primarily for the buyer's personal, family, or household purposes; and
- (4) before the filing of a financing statement covering the goods.

(c) To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by section 9-316(a) and (b).

(d) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under section 9-313.

(f) No buyer shall be allowed to take advantage of and apply the right of offset to defeat a priority established by any lien or security interest.

Source: Laws 1999, LB 550, § 113; Laws 2003, LB 4, § 7; Laws 2007, LB124, § 71.
Operative date September 1, 2007.

COMMENT

1. **Source.** Former section 9-307.

2. **Scope of This Section.** This section states when buyers of goods take free of a security interest even though perfected. Of course, a buyer who takes free of a perfected security interest takes free of an unperfected one. Section 9-317 should be consulted to determine what purchasers, in addition to the buyers covered in this section, take free of an unperfected security interest. Article 2 states general rules on purchase of goods from a seller with defective or voidable title (section 2-403).

3. **Buyers in Ordinary Course.** Subsection (a) derives from former section 9-307(1). The definition of "buyer in ordinary course of business" in section 1-201 restricts its application to buyers "from a person, other

than a pawnbroker, in the business of selling goods of that kind". Thus subsection (a) applies primarily to inventory collateral. The subsection further excludes from its operation buyers of "farm products" (defined in section 9-102) from a person engaged in farming operations. The buyer in ordinary course of business is defined as one who buys goods "in good faith, without knowledge that the sale violates the rights of another person and in the ordinary course". Subsection (a) provides that such a buyer takes free of a security interest, even though perfected, and even though the buyer knows the security interest exists. Reading the definition together with the rule of law results in the buyer's taking free if the buyer merely knows that a security interest covers the goods but taking subject to if the buyer knows, in addition, that the sale violates a

term in an agreement with the secured party.

As did former section 9-307(1), subsection (a) applies only to security interests created by the seller of the goods to the buyer in ordinary course. However, under certain circumstances a buyer in ordinary course who buys goods that were encumbered with a security interest created by a person other than the seller may take free of the security interest, as example 2 explains. See also comment 6, below.

Example 1: Manufacturer, who is in the business of manufacturing appliances, owns manufacturing equipment subject to a perfected security interest in favor of Lender. Manufacturer sells the equipment to Dealer, who is in the business of buying and selling used equipment. Buyer buys the equipment from Dealer. Even if Buyer qualifies as a buyer in the ordinary course of business, Buyer does not take free of Lender's security interest under subsection (a), because Dealer did not create the security interest; Manufacturer did.

Example 2: Manufacturer, who is in the business of manufacturing appliances, owns manufacturing equipment subject to a perfected security interest in favor of Lender. Manufacturer sells the equipment to Dealer, who is in the business of buying and selling used equipment. Lender learns of the sale but does nothing to assert its security interest. Buyer buys the equipment from Dealer. Inasmuch as Lender's acquiescence constitutes an "entrusting" of the goods to Dealer within the meaning of section 2-403(3) Buyer takes free of Lender's security interest under section 2-403(2) if Buyer qualifies as a buyer in ordinary course of business.

4. **Buyers of Farm Products.** This section does not enable a buyer of farm products to take free of a security interest created by the seller, even if the buyer is a buyer in ordinary course of business. However, a buyer of farm products may take free of a security interest under section 1324 of the Food Security Act of 1985, 7 U.S.C. section 1631.

5. **Buyers of Consumer Goods.** Subsection (b), which derives from former section 9-307(2), deals with buyers of collateral that the debtor-seller holds as "consumer goods" (defined in section 9-102). Under section 9-309(1), a purchase-money security interest in consumer goods, except goods that are subject to a statute or treaty described in section 9-311(a) (such as automobiles that are subject to a certificate-of-title statute), is perfected automatically upon attachment. There is no need to file to perfect. Under subsection (b) a buyer of consumer goods takes free of a security interest, even though perfected, if the buyer buys (1) without knowledge of the security interest, (2) for value, (3) primarily for the buyer's own personal,

family, or household purposes, and (4) before a financing statement is filed.

As to purchase-money security interests which are perfected without filing under section 9-309(1): A secured party may file a financing statement, although filing is not required for perfection. If the secured party does file, all buyers take subject to the security interest. If the secured party does not file, a buyer who meets the qualifications stated in the preceding paragraph takes free of the security interest.

As to security interests for which a perfection step is required: This category includes all non-purchase-money security interests, and all security interests, whether or not purchase-money, in goods subject to a statute or treaty described in section 9-311(a), such as automobiles covered by a certificate-of-title statute. As long as the required perfection step has not been taken and the security interest remains unperfected, not only the buyers described in subsection (b) but also the purchasers described in section 9-317 will take free of the security interest. After a financing statement has been filed or the perfection requirements of the applicable certificate-of-title statute have been complied with (compliance is the equivalent of filing a financing statement; see section 9-311(b)), all subsequent buyers, under the rule of subsection (b), are subject to the security interest.

The rights of a buyer under subsection (b) turn on whether a financing statement has been filed against consumer goods. Occasionally, a debtor changes his or her location after a filing is made. Subsection (c), which derives from former section 9-103(1)(d)(iii), deals with the continued effectiveness of the filing under those circumstances. It adopts the rules of section 9-316(a) and (b). These rules are explained in the comments to that section.

6. **Authorized Dispositions.** The limitations that subsections (a) and (b) impose on the persons who may take free of a security interest apply of course only to unauthorized sales by the debtor. If the secured party authorized the sale in an express agreement or otherwise, the buyer takes free under section 9-315(a) (1) without regard to the limitations of this section. (That section also states the right of a secured party to the proceeds of a sale, authorized or unauthorized.) Moreover, the buyer also takes free if the secured party waived or otherwise is precluded from asserting its security interest against the buyer. See section 1-103.

7. **Oil, Gas, and Other Minerals.** Under subsection (d), a buyer in ordinary course of business of minerals at the wellhead or minehead or after extraction takes free of a security interest created by the seller. Specifically, it provides that qualified buyers take free not only of article 9 security interests but also of interests "arising out of an encumbrance". As

defined in section 9-102, the term "encumbrance" means "a right, other than an ownership interest, in real property". Thus, to the extent that a mortgage encumbers minerals not only before but also after extraction, subsection (d) enables a buyer in ordinary course of the minerals to take free of the mortgage. This subsection does not, however, enable these buyers to take free of interests arising out of ownership interests in the real property. This issue is significant only in a minority of states. Several of them have adopted special statutes and nonuniform amendments to article 9 to provide special protections to mineral owners, whose interests often are highly fractionalized in the case of oil and gas. See Terry I. Cross, *Oil and Gas Product Liens -- Statutory Security Interests for Producers and Royalty Owners Under the Statutes of Kansas, New Mexico, Oklahoma, Texas and Wyoming*, 50 *Consumer Fin. L. Q. Rep.* 418 (1996). Inasmuch as a complete resolution of the issue would require the

addition of complex provisions to this article, and there are good reasons to believe that a uniform solution would not be feasible, this article leaves its resolution to other legislation.

8. **Possessory Security Interests.** Subsection (e) is new. It rejects the holding of *Tanbro Fabrics Corp. v. Deering Milliken, Inc.*, 350 N.E.2d 590 (N.Y. 1976) and, together with section 9-317(b), prevents a buyer of goods collateral from taking free of a security interest if the collateral is in the possession of the secured party. "The secured party" referred in subsection (e) is the holder of the security interest referred to in subsection (a) or (b). Section 9-313 determines whether a secured party is in possession for purposes of this section. Under some circumstances, section 9-313 provides that a secured party is in possession of collateral even if the collateral is in the physical possession of a third party.

Part 5

FILING

Subpart 2

DUTIES AND OPERATION OF FILING OFFICE

9-529. Secretary of State; implementation of centralized computer system. (a) The Secretary of State shall implement and maintain a centralized computer system for the accumulation and dissemination of information relative to financing statements for any type of collateral except collateral described in section 9-501(a)(1). Such a system shall include the entry of information into the computer system by the Secretary of State pursuant to section 9-530 and the dissemination of such information by a computer system or systems, telephone, mail, and such other means of communication as may be deemed appropriate. Such system shall be an interactive system.

(b) Computer access to information regarding obligations of debtors shall be made available twenty-four hours a day on every day of the year. The Secretary of State shall provide information from the system by telephone during normal business hours.

(c) The centralized computer system implemented and maintained pursuant to this section shall include information relative to effective financing statements as provided in sections 52-1301 to 52-1322, Reissue Revised Statutes of Nebraska, and statutory liens as provided in sections 52-1601 to 52-1605, Reissue Revised Statutes of Nebraska.

Source: Laws 1999, LB 550, § 173; Laws 2003, LB 4, § 8; Laws 2007, LB124, § 72.
Operative date September 1, 2007.

9-531. Uniform Commercial Code Cash Fund; created; use; Secretary of State; duties; fees. (a) There is created the Uniform Commercial Code Cash Fund. Except as otherwise specifically provided, all funds received pursuant to this part and sections 52-1312, 52-1313, 52-1316, and 52-1602, Reissue Revised Statutes of Nebraska, shall be

placed in the fund and used by the Secretary of State to carry out this part, sections 52-1301 to 52-1322, Reissue Revised Statutes of Nebraska, and sections 52-1601 to 52-1605, Reissue Revised Statutes of Nebraska, except that transfers from the Uniform Commercial Code Cash Fund to the General Fund and the Records Management Cash Fund may be made at the direction of the Legislature.

(b)(1) The Secretary of State shall furnish each county clerk with computer terminal hardware, including a printer, compatible with the centralized computer system implemented and maintained pursuant to section 9-529, for inquiries and searches of information in such centralized computer system. The terminals shall be readily and reasonably available and accessible to members of the public for such inquiries and searches.

(2) The fees charged by county clerks for inquiries and other services regarding information in the centralized computer system shall be the same as set forth for filing offices in this part.

Source: Laws 1999, LB 550, § 175; Laws 2001, LB 541, § 10; Laws 2003, LB 4 § 9; Laws 2007, LB124, § 73.
Operative date September 1, 2007.

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CLASSIFICATION OF PENALTIES

CLASS III FELONY		Maximum – twenty years imprisonment, or twenty-five thousand dollars fine, or both
		Minimum – one year imprisonment
38-140	Violation of cease and desist order prohibiting the unauthorized practice of a credentialed profession or unauthorized operation of a credentialed business under the Uniform Credentialing Act	
38-1,124	Violation of cease and desist order prohibiting the unauthorized practice of a credentialed profession or unauthorized operation of a credentialed business under the Uniform Credentialing Act	
*71-168	Violation of cease and desist order prohibiting the unauthorized practice of a credentialed profession under the Uniform Licensing Law	
CLASS IV FELONY		Maximum – five years imprisonment, or ten thousand dollars fine, or both
		Minimum – none
28-833	Enticement by electronic communication device	
28-1009	Abandonment or cruel neglect of animal not resulting in serious injury, illness, or death	
38-1,117	False or forged document or fraud in procuring license, certificate, or registration to practice a health profession, aiding or abetting person practicing without a credential, or impersonating a credentialed person	
38-2052	Person purporting to be a physician's assistant when not licensed	
38-3130	Psychologist filing false diploma, license of another, or forged affidavit of identification	
*71-1737	Violation of provisions relating to licensure of certified registered nurse anesthetists	
71-6312	Unlawfully engaging in an asbestos project without a valid license or using unlicensed employees subsequent to the levy of a civil penalty, second or subsequent offense	
71-6329	Engaging in a lead abatement project or lead-based paint profession without a valid license or using unlicensed employees after assessment of a civil penalty, second or subsequent offense	
71-6329	Conducting a lead abatement project or lead-based paint profession training program without departmental accreditation after assessment of a civil penalty, second or subsequent offense	
71-6329	Issuing fraudulent licenses under the Residential Lead-Based Paint Professions Practice Act after assessment of a civil penalty, second or subsequent offense	
CLASS I MISDEMEANOR		Maximum – not more than one year imprisonment, or one thousand dollars fine, or both
		Minimum – none

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28-1009	Abandonment or cruel neglect of animal not resulting in serious injury, illness, or death
38-1,106	Disclosure of confidential complaints, investigational records, or reports regarding violation of Uniform Credentialing Act
45-708	Engaging in mortgage banking if convicted of certain misdemeanors or a felony
71-6312	Unlawfully engaging in an asbestos project without a valid license or using unlicensed employees subsequent to the levy of a civil penalty, first offense
71-6329	Engaging in a lead abatement project or lead-based paint profession without a valid license or using unlicensed employees after assessment of a civil penalty, first offense
71-6329	Conducting a lead abatement project or lead-based paint profession training program without departmental accreditation after assessment of a civil penalty, first offense
71-6329	Issuing fraudulent licenses under the Residential Lead-Based Paint Professions Practice Act after assessment of a civil penalty, first offense
77-2711	Disclosure of taxpayer information by employees of Legislative Performance Audit Section or Auditor of Public Accounts or former employees

CLASS II MISDEMEANOR Maximum – six months imprisonment, or one thousand dollars fine, or both

Minimum – none

37-573	Hunt or enable another to hunt through the Internet or host hunting through the Internet
38-1,118	Violation of Uniform Credentialing Act when not otherwise specified, second or subsequent offense
38-1,133	Failure of insurer to report violations of Uniform Credentialing Act, second or subsequent offense
38-1424	Willful malpractice, solicitation of business, and other unprofessional conduct in the practice of funeral directing and embalming
38-28,103	Violations of Pharmacy Practice Act except as otherwise specifically provided
38-3130	Representing oneself as a psychologist or practicing psychology without a license
46-1239	Violating the licensure requirements of the Water Well Standards and Contractors' Practice Act
54-706.05	Interfere with or obstruct inspections or tests under the Bovine Tuberculosis Act
54-706.08	Prevent testing of or remove animal quarantined under Bovine Tuberculosis Act
54-706.09	Interfere with or obstruct confining of affected herds or examinations or tests under the Bovine Tuberculosis Act
54-706.17	Other violations of the Bovine Tuberculosis Act or rules and regulations
77-2790	Claiming excessive exemptions or overstating withholding to evade income taxes

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CLASS III MISDEMEANOR Maximum – three months imprisonment, or five hundred dollars fine, or both

Minimum – none

2-5605	Violations relating to excise taxes on grapes
28-424	Inhaling or drinking certain intoxicating compounds
28-424	Inducing or enticing another to sell, inhale, or drink certain intoxicating compounds or to fail to maintain register for one year
38-1,118	Violation of Uniform Credentialing Act when not otherwise specified, first offense
38-1,133	Failure of insurer to report violations of Uniform Credentialing Act, first offense
38-10,165	Performing body art on minor without written consent of parent or guardian and keeping record 5 years
38-2867	Unlicensed person practicing pharmacy
46-1240	Engaging in business or employing another without complying with standards under Water Well Standards and Contractors' Practice Act
48-612	Commissioner of Labor employees violating provisions relating to administration of Employment Security Law
48-612.01	Unauthorized disclosure of information received for administration of Employment Security Law
48-736	Violation of Boiler Inspection Act
48-1005	Age discrimination in employment or interfering with enforcement of statutes relating to age discrimination in employment
53-167.03	Tamper with, alter, or remove beer keg identification number or possess beer container with altered or removed keg identification number
68-314	Unlawful use and disclosure of books and records of Department of Health and Human Services

CLASS IV MISDEMEANOR Maximum – no imprisonment, five hundred dollars fine

Minimum – one hundred dollars fine

60-6,304	Operation of vehicle improperly constructed or loaded or with cargo or contents not properly secured
75-371	Operating motor vehicle in violation of insurance and bond requirements for motor carriers
75-398	Operation of vehicle in violation of provisions relating to the unified carrier registration plan and agreement
81-1525	Failure or refusal to remove accumulation of junk

CLASS V MISDEMEANOR Maximum – no imprisonment, one hundred dollars fine

Minimum – none

2-3974	Violation of Nebraska Milk Act or impeding or attempting to impede enforcement of the act
48-237	Prohibited uses of social security numbers by employers

*Sections noted with an asterisk terminate December 1, 2008.

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ACTS, CODES, AND OTHER NAMED LAWS

NAME OF ACT	WHERE CITED
Access College Early Scholarship Program Act	85-2101
Advanced Practice Registered Nurse Practice Act	38-201
Age Discrimination in Employment Act	48-1001
Alcohol and Drug Counseling Practice Act	38-301
Athletic Training Practice Act	38-401
Audiology and Speech-Language Pathology Practice Act	38-501
Autism Treatment Program Act	85-1,138
Bovine Tuberculosis Act	54-706.01
Captive Insurers Act	44-8201
Certified Nurse Midwifery Practice Act	38-601
Certified Registered Nurse Anesthetist Practice Act	38-701
Chiropractic Practice Act	38-801
Clinical Nurse Specialist Practice Act	38-901
Community College Foundation and Equalization Aid Act	85-2201
Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act	38-1001
Credit Report Protection Act	8-2601
Dentistry Practice Act	38-1101
Emergency Medical Services Practice Act	38-1201
Environmental Health Specialists Practice Act	38-1301
Family Military Leave Act	55-501
Funeral Directing and Embalming Practice Act	38-1401
Health and Human Services Act	81-3110
Hearing Aid Instrument Dispensers and Fitters Practice Act	38-1501
Hepatitis C Education and Prevention Act	71-545
Law Enforcement Officers Retirement Survey Act	50-417.02
Licensed Practical Nurse-Certified Practice Act	38-1601
Massage Therapy Practice Act	38-1701
Medical Nutrition Therapy Practice Act	38-1801
Medical Radiography Practice Act	38-1901
Medicine and Surgery Practice Act	38-2001
Mental Health Practice Act	38-2101
Minor Alcoholic Liquor Liability Act	53-401
Nebraska Limited Cooperative Association Act	21-2901
Nebraska Milk Act	2-3965
Nebraska Operational Assistance Act	81-12,129
Nebraska Protection in Annuity Transactions Act	44-8101
Nebraska Uniform Prudent Management of Institutional Funds Act	58-610
Nurse Practice Act	38-2201
Nurse Practitioner Practice Act	38-2301
Nursing Home Administrator Practice Act	38-2401
Occupational Therapy Practice Act	38-2501
Optometry Practice Act	38-2601
Parenting Act	43-2920
Perfusion Practice Act	38-2701
Pharmacy Practice Act	38-2801

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Physical Therapy Practice Act	38-2901
Podiatry Practice Act	38-3001
Probation and Parole Services Study Act	47-635
Property Tax Credit Act	77-4209
Psychology Practice Act	38-3101
Respiratory Care Practice Act	38-3201
Rural Community-Based Energy Development Act	70-1901
Student Diversity Scholarship Program Act	85-9,177
Uniform Child Abduction Prevention Act	43-3901
Uniform Credentialing Act	38-101
Veterinary Medicine and Surgery Practice Act	38-3301
Water Well Standards and Contractors' Practice Act	46-1201

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CROSS REFERENCE TABLE

2007 Session Laws of Nebraska, First Session
Showing LB section number to statute section number

2007 Session Laws	2007 Supplement	2007 Session Laws	2007 Supplement	2007 Session Laws	2007 Supplement
LB 1	§ 1 28-1317	LB 35	§ 1 60-4,182	LB 97	§ 1 69-2441
	2 28-1318		2 60-6,186		2 69-2443
	3 Omitted		3 Omitted		3 Omitted
LB 2	§ 1 Omitted		4 Omitted	LB 99	§ 1 25-1081
LB 5	§ 1 81-1346	LB 43	§ 1 39-1359.01		2 Omitted
	2 81-1350	LB 44	§ 1 32-913		3 Omitted
	3 81-1351		2 32-914	LB 108	§ 1 2-4806
	4 Omitted		3 32-1026		2 2-4808
LB 8	§ 1 81-1525		4 Omitted		3 34-102
	2 Omitted	LB 63	§ 1 44-784		4 34-112
LB 11	§ 1 16-117		2 Omitted		5 34-112.01
	2 Omitted	LB 64	§ 1 Omitted		6 34-112.02
LB 12	§ 1 54-625	LB 67	§ 1 25-1629.04		7 34-112.03
	2 54-627		2 Omitted		8 37-1012
	3 54-628	LB 69	§ 1 2-5415		9 Omitted
	4 54-629		2 2-5416		10 Omitted
	5 54-630		3 2-5418	LB 110	§ 1 54-706.01
	6 54-631		4 Omitted		2 54-706.02
	7 54-632	LB 73	§ 1 79-10,138		3 54-706.03
	8 54-633		2 Omitted		4 54-706.04
	9 54-643		3 Omitted		5 54-706.05
	10 Omitted		4 Omitted		6 54-706.06
LB 12A	Omitted	LB 73A	Omitted		7 54-706.07
LB 21	§ 1 79-1007.02	LB 74	§ 1 81-2,239		8 54-706.08
	2 79-1007.10		2 81-2,244.01		9 54-706.09
	3 79-1022		3 81-2,248		10 54-706.10
	4 79-1026		4 81-2,257		11 54-706.11
	5 79-1027		5 81-2,270		12 54-706.12
	6 79-1031.01		6 81-2,272.10		13 54-706.13
	7 Omitted		7 81-2,272.17		14 54-706.14
	8 Omitted		8 81-2,272.24		15 54-706.15
LB 24	§ 1 1-124		9 81-2,272.25		16 54-706.16
	2 1-136.02		10 Omitted		17 54-706.17
	3 Omitted		11 Omitted		18 2-3918
	4 Omitted		12 Omitted		19 Omitted
LB 25	§ 1 71-4401		13 Omitted		20 Omitted
	2 71-4402	LB 79	§ 1 81-1504.01		21 Omitted
	3 71-4402.02		2 Omitted	LB 111	§ 1 2-3965
	4 71-4402.03		3 Omitted		2 2-3966
	5 71-4403	LB 80	§ 1 71-5318		3 2-3967
	6 71-4404		2 71-5322		4 2-3968
	7 71-4405		3 Omitted		5 2-3969
	8 71-4406	LB 80A	Omitted		6 2-3970
	9 71-4407	LB 83	§ 1 83-4,142		7 2-3971
	10 71-4408		2 83-4,143		8 2-3972
	11 71-4409		3 83-4,144		9 2-3973
	12 71-4410		4 83-4,145		10 2-3974
	13 71-4412		5 83-4,146		11 2-3975
	14 Omitted		6 Omitted		12 2-3976
LB 26	§ 1 81-885.01		7 Omitted		13 2-3977
	2 Omitted	LB 88	Omitted		14 2-3978
LB 28	§ 1 17-503.02	LB 94	§ 1 77-2711		15 2-3979
	2 Omitted		2 77-27,144		16 2-3980
LB 34	§ 1 50-445		3 Omitted		17 2-3981

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	18		49		58		52-1301
	19		50		59		52-1302
	20		51		60		52-1302.01
	21		52		61		52-1307
	22		53		62		52-1308
	23		54		63		52-1312
	24		55		64		52-1313
	25	LB 124	§ 1		65		52-1314
	26		2		66		52-1315
	27		3		67		52-1317
	28		4		68		52-1318
	29		5		69		52-1602
	30		6		70		9-315 UCC
	31		7		71		9-320 UCC
LB 115	§ 1		8		72		9-529 UCC
	2		9		73		9-531 UCC
LB 117	§ 1		10		74		Omitted
	2		11		75		Omitted
	3		12		76		Omitted
	4		13		77		Omitted
	5		14		78		Omitted
	6		15		79		Omitted
	7		16	LB 132	§ 1		42-372.03
	8		17		2		Omitted
	9		18	LB 136	§ 1		58-610
	10		19		2		58-611
	11		20		3		58-612
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	13		22		5		58-614
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	17		26		9		58-618
	18		27		10		58-619
	19		28		11		Omitted
	20		29	LB 142	§ 1		28-101
	21		30		2		28-833
	22		31		3		Omitted
	23		32	LB 143	§ 1		29-216
	24		33	LB 144	§ 1		71-545
	25		34		2		71-546
	26		35		3		71-547
	27		36		4		71-548
	28		37		5		71-549
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	30		39		7		Omitted
	31		40	LB 145	§ 1		77-3510
	32		41		2		77-3513
	33		42		3		77-3514
	34		43		4		Omitted
	35		44	LB 147	§ 1		60-6,304
	36		45		2		Omitted
	37		46	LB 148	§ 1		60-6,301
	38		47		2		Omitted
	39		48	LB 150	§ 1		79-809
	40		49		2		79-810
	41		50		3		Omitted
	42		51	LB 152	§ 1		71-1,200
	43		52		2		Omitted
	44		53	LB 160	§ 1		25-21,282
	45		54		2		35-801
	46		55		3		Omitted
	47		56	LB 161	§ 1		81-15,130
	48		57		2		Omitted

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Session Laws	Supplement							
LB 166	§ 1	60-147	37	71-17,135		2	18-2420	
		72-258.03	38	71-17,137		3	18-2422	
		77-201	39	71-17,138		4	18-2425	
		77-202.03	40	71-17,139		5	18-2427	
		77-1233.04	41	71-17,140		6	18-2436	
		77-1344	42	71-5185		7	18-2438	
		77-1347.01	43	71-6039		8	18-2439	
		77-1348	44	71-6726		9	84-1411	
		77-1355	45	71-6733		10	Omitted	
		77-1613.02	46	71-8249	LB 203	§ 1	71-401	
		77-5018	47	71-8252		2	71-403	
		Omitted	48	81-647		3	71-427.01	
		Omitted	49	81-671		4	71-434	
		Omitted	50	Omitted		5	71-452	
LB 167	§ 1	25-1901	51	Omitted		6	71-453	
		77-1504	52	Omitted		7	Omitted	
		77-1507.01	53	Omitted	LB 206	§ 1	14-553	
		77-5003	54	Omitted		2	14-554	
		77-5011	55	Omitted		3	14-1821	
		77-5016	LB 186	§ 1	76-2210		4	Omitted
		77-5017		2	76-2210.01		5	Omitted
		77-5020		3	76-2210.02	LB 207	§ 1	14-2109
		77-5023		4	76-2213		2	14-2110
		77-5026		5	76-2213.01		3	14-2146
		77-5028		6	76-2217.01		4	14-2147
		Omitted		7	76-2219		5	Omitted
		Omitted		8	76-2223	LB 208	§ 1	52-118
		Omitted		9	76-2226		2	Omitted
LB 185	§ 1	68-906	10	76-2227	LB 211	§ 1	48-806	
		68-919	11	76-2228		2	Omitted	
		68-921	12	76-2228.01		3	Omitted	
		71-629	13	76-2229	LB 211A		Omitted	
		71-1707	14	76-2229.01	LB 213	§ 1	24-514	
		71-1722	15	76-2230		2	25-2732	
		71-1723	16	76-2231.01		3	Omitted	
		71-1723.01	17	76-2232	LB 214	§ 1	23-1205	
		71-1723.02	18	76-2233		2	24-516	
		71-1724	19	76-2233.01		3	29-509	
		71-1724.01	20	76-2236		4	Omitted	
		71-1726.01	21	76-2237		5	Omitted	
		71-1726.02	22	76-2241	LB 218	§ 1	28-456	
		71-1729	23	76-2242		2	Omitted	
	71-1730	24	76-2247.01	LB 219	§ 1	79-458		
	71-1731	25	77-5004		2	Omitted		
	71-1734	26	Omitted		3	Omitted		
	71-1735	LB 188	§ 1	44-3522	LB 221	§ 1	42-353	
	71-1737		2	Omitted		2	43-1803	
	71-1748		3	Omitted		3	Omitted	
	71-1749	LB 191	§ 1	21-2095	LB 223	§ 1	77-375	
	71-1752		2	44-211		2	77-3,112	
	71-1755		3	Omitted		3	77-2701	
	71-1756		4	Omitted		4	77-2701.04	
	71-1757	LB 192	§ 1	85-1412		5	77-2701.48	
	71-1764		2	85-2101		6	77-2701.35	
	71-1765		3	85-2102		7	77-2703	
	71-17,118		4	85-2103		8	77-2703.04	
	71-17,119		5	85-2104		9	77-2711	
	71-17,121		6	85-2105		10	77-2712.03	
	71-17,122		7	85-2106		11	77-2712.05	
	71-17,123		8	85-2107		12	77-2753	
	71-17,124		9	85-2108		13	77-2756	
	71-17,128		10	Omitted		14	77-2790	
	71-17,129		11	Omitted		15	77-27,131	
	71-17,134	LB 199	§ 1	18-2410		16	77-27,187.01	

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	18	77-27,188		29	71-1,142		33	71-1,195.05
	19	77-27,189		30	71-1,147		34	71-1,195.06
	20	77-27,190		31	71-1,147.65		35	71-1,195.07
	21	77-27,192		32	71-1,147.66		36	71-1,195.08
	22	77-3102		33	71-1,147.67		37	71-1,195.09
	23	77-3903		34	71-1,147.68		38	71-1,296
	24	77-3904		35	71-1,147.69		39	71-1,305.01
	25	77-4105		36	71-1,147.70		40	71-1,307
	26	77-4110		37	71-1,147.71		41	71-1,308
	27	77-4933		38	71-1,147.72		42	71-1,314.02
	28	77-5542		39	71-6501		43	71-1,315
	29	77-5715		40	71-6502		44	71-1,316
	30	77-5725		41	71-6503		45	71-1,333
	31	77-5803		42	71-6504		46	71-1,335
	32	77-5904		43	71-415		47	71-1,336
	33	Omitted		44	71-6720		48	71-1,337
	34	Omitted		45	Omitted		49	71-1,338
	35	Omitted		46	Omitted		50	71-1913.01
	36	Omitted		47	Omitted		51	71-2421
LB 226	§ 1	48-720	LB 236A		Omitted		52	71-4702
	2	48-722	LB 237	§ 1	40-101		53	71-4707
	3	48-730		2	Omitted		54	71-5403
	4	48-731	LB 239	§ 1	60-311		55	71-7438
	5	48-736		2	60-342		56	71-8402
	6	Omitted		3	60-3,196		57	81-651
	7	Omitted		4	60-462.01		58	38-101
LB 227	§ 1	28-1008		5	60-4,147.02		59	38-121
	2	28-1009		6	60-6,265		60	38-131
	3	Omitted		7	60-6,267		61	38-1,125
LB 231	§ 1	79-1102		8	75-363		62	38-1,130
	2	Omitted		9	75-364		63	38-501
LB 232	§ 1	81-12,126		10	Omitted		64	38-502
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	3	Omitted		2	28-405		66	38-506
LB 233	§ 1	13-1303		3	28-412		67	38-507
	2	Omitted		4	43-102		68	38-508
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	2	71-102		6	43-104.01		70	38-1509
	3	71-107		7	43-104.02		71	38-1512
	4	71-110		8	43-104.03		72	38-2101
	5	71-112		9	43-104.04		73	38-2613
	6	71-162		10	43-104.05		74	38-2614
	7	71-168		11	43-104.08		75	38-2615
	8	71-1,390		12	43-104.09		76	38-2701
	9	71-1,391		13	43-104.12		77	38-2705
	10	71-1,392		14	43-104.13		78	38-2708
	11	71-1,393		15	43-104.14		79	38-2801
	12	71-1,394		16	43-104.17		80	38-2836
	13	71-1,395		17	43-104.22		81	38-2867
	14	71-1,396		18	43-104.25		82	38-2891
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	16	71-1,398		20	43-106		84	38-2895
	17	71-1,399		21	43-906		85	71-6504
	18	71-1,400		22	43-1411		86	44-7,102
	19	71-1,401		23	71-101		87	Omitted
	20	71-1,133		24	71-193.15		88	Omitted
	21	71-1,134		25	71-193.17		89	Omitted
	22	71-1,135		26	71-1,147.35		90	Omitted
	23	71-1,135.02		27	71-1,186		91	Omitted
	24	71-1,135.04		28	71-1,187		92	Omitted
	25	71-1,135.06		29	71-1,195.01		93	Omitted
	26	71-1,136		30	71-1,195.02	LB 247A		Omitted
	27	71-1,136.01		31	71-1,195.03	LB 248	§ 1	39-1601

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	2	39-1605		31	48-2508		39	60-3,118
	3	39-1606		32	48-2512		40	60-3,122
	4	39-1607		33	Omitted		41	60-3,123
	5	Omitted		34	Omitted		42	60-3,124
	6	Omitted		35	Omitted		43	60-3,125
	7	Omitted		36	Omitted		44	60-3,126
LB 252	§ 1	81-8,118		37	Omitted		45	60-3,128
	2	Omitted		38	Omitted		46	60-3,130.04
LB 255	§ 1	48-1228		39	Omitted		47	60-3,141
	2	48-1229		40	Omitted		48	60-3,142
	3	48-1230		41	Omitted		49	60-3,145
	4	48-1230.01	LB 274	§ 1	57-517		50	60-3,147
	5	48-1232		2	Omitted		51	60-3,150
	6	Omitted	LB 277	§ 1	39-1320		52	60-3,184
	7	Omitted		2	39-2116		53	60-3,186
LB 256	§ 1	72-803		3	39-2119		54	60-3,188
	2	72-818		4	39-2119.01		55	60-3,190
	3	73-508		5	39-2124		56	Omitted
	4	81-154		6	39-2125		57	Omitted
	5	81-161.03		7	39-2502	LB 289	§ 1	77-3444
	6	81-8,239.01		8	39-2512		2	Omitted
	7	81-8,239.11		9	Omitted	LB 290	§ 1	24-809
	8	81-8,239.02	LB 283	§ 1	71-162		2	Omitted
	9	81-8,239.03		2	71-6728	LB 292	§ 1	68-104
	10	81-8,239.04		3	Omitted		2	68-1803
	11	81-8,239.05	LB 283A		Omitted		3	Omitted
	12	81-8,239.07	LB 286	§ 1	60-101	LB 292A		Omitted
	13	81-1108.43		2	60-102	LB 296	§ 1	81-3110
	14	83-901		3	60-114		2	81-3111
	15	83-916		4	60-117		3	81-3112
	16	Omitted		5	60-119.01		4	81-3113
	17	Omitted		6	60-123		5	81-3114
LB 263	§ 1	13-2036		7	60-134		6	81-3115
	2	Omitted		8	60-136.01		7	81-3116
LB 265	§ 1	13-1102		9	60-137		8	81-3117
	2	20-113		10	60-145		9	81-3118
	3	48-601		11	60-146		10	81-3119
	4	48-602		12	60-152		11	81-3120
	5	48-606		13	60-153		12	81-3121
	6	48-612		14	60-164		13	81-3122
	7	48-612.01		15	60-166		14	81-3123
	8	48-624		16	60-168		15	81-3124
	9	48-649		17	60-168.01		16	2-15,100
	10	48-652		18	60-168.02		17	2-2626
	11	48-663.01		19	60-173		18	2-3254
	12	48-664		20	60-301		19	2-3925
	13	48-1001		21	60-302		20	2-3928
	14	48-1002		22	60-308		21	2-3932
	15	48-1003		23	60-324		22	2-4901
	16	48-1004		24	60-325		23	13-1207
	17	48-1005		25	60-333		24	23-1204.06
	18	48-1007		26	60-336.01		25	23-3595
	19	48-1008		27	60-339		26	28-322.04
	20	48-1009		28	60-345		27	28-326
	21	48-1010		29	60-351.01		28	28-328
	22	48-1203		30	60-355		29	28-343
	23	48-1203.01		31	60-356		30	28-345
	24	81-405		32	60-378		31	28-356
	25	48-1809		33	60-385		32	28-372
	26	48-2501		34	60-387		33	28-377
	27	48-2512.01		35	60-395		34	28-380
	28	48-2503		36	60-397		35	28-401
	29	48-2506		37	60-3,104		36	28-456
	30	48-2507		38	60-3,107		37	28-713

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39	28-726	103	43-146.14	167	43-3336		
40	28-728	104	43-146.15	168	43-3338		
41	28-734	105	43-146.16	169	43-3342.04		
42	28-735	106	43-146.17	170	43-3401		
43	28-736	107	43-161	171	43-3402		
44	28-737	108	43-284.02	172	43-3810		
45	28-738	109	43-404	173	44-771		
46	29-2928	110	43-411	174	44-772		
47	29-2929	111	43-504.01	175	44-773		
48	29-4125	112	43-507	176	44-774		
49	30-2487	113	43-508	177	44-782		
50	31-740	114	43-511	178	44-793		
51	32-310	115	43-512	179	44-1102		
52	32-327	116	43-512.11	180	44-2835		
53	37-1254.05	117	43-515	181	44-2847		
54	37-1254.06	118	43-522	182	44-2901		
55	42-106	119	43-523	183	44-2904		
56	42-358	120	43-524	184	44-32,119		
57	42-358.01	121	43-525	185	44-32,120		
58	42-358.02	122	43-529	186	44-32,127		
59	42-364.13	123	43-536	187	44-32,128		
60	42-705	124	43-905	188	44-32,134		
61	42-917	125	43-907	189	44-32,136		
62	43-102	126	43-908	190	44-32,152		
63	43-104.01	127	43-1320	191	44-32,153		
64	43-104.02	128	43-1408.01	192	44-32,156		
65	43-104.03	129	43-1414	193	44-32,157		
66	43-104.04	130	43-1718.02	194	44-32,163		
67	43-107	131	43-1720	195	44-32,165		
68	43-118	132	43-1902	196	44-32,176		
69	43-119	133	43-1903	197	44-4109.01		
70	43-122	134	43-1904	198	44-7006		
71	43-123.01	135	43-1905	199	44-7107		
72	43-124	136	43-2002	200	44-7206		
73	43-125	137	43-2003	201	44-7306		
74	43-126	138	43-2411	202	46-602		
75	43-127	139	43-2503	203	46-705		
76	43-130	140	43-2505	204	46-724		
77	43-131	141	43-2507	205	46-1011		
78	43-132	142	43-2508	206	46-1018		
79	43-133	143	43-2509	207	46-1204.01		
80	43-134	144	43-2510	208	46-1207		
81	43-135	145	43-2511	209	46-1217		
82	43-137	146	43-2512	210	46-1235		
83	43-138	147	43-2515	211	46-1235.01		
84	43-139	148	43-2605	212	46-1237.01		
85	43-140	149	43-2606	213	46-1237.02		
86	43-141	150	43-2616	214	46-1240.05		
87	43-142	151	43-2617	215	47-623		
88	43-143	152	43-2620	216	48-602		
89	43-144	153	43-3305.01	217	48-647		
90	43-145	154	43-3314	218	48-1902		
91	43-146	155	43-3317	219	48-2305		
92	43-146.02	156	43-3318	220	48-2306		
93	43-146.04	157	43-3319	221	48-2307		
94	43-146.05	158	43-3320	222	49-506		
95	43-146.06	159	43-3323	223	49-617		
96	43-146.07	160	43-3325	224	54-703		
97	43-146.08	161	43-3326	225	54-744.01		
98	43-146.09	162	43-3327	226	54-747		
99	43-146.10	163	43-3329	227	60-3,135		
100	43-146.11	164	43-3333	228	60-480.01		
101	43-146.12	165	43-3334	229	60-493		

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231	60-4,164.01	295	69-305	359	71-1,238		
232	60-6,104	296	71-101	360	71-1,290		
233	60-6,107	297	71-102	361	71-1,312		
234	60-6,201	298	71-104	362	71-1,339		
235	60-6,202	299	71-105	363	71-1,341		
236	68-126	300	71-121.01	364	71-1,367		
237	68-129	301	71-139	365	71-354		
238	68-130	302	71-141	366	71-390		
239	68-309	303	71-142	367	71-3,173		
240	68-312	304	71-150	368	71-3,174		
241	68-313	305	71-151	369	71-410		
242	68-703.01	306	71-153	370	71-411		
243	68-716	307	71-155	371	71-434		
244	68-717	308	71-155.01	372	71-445		
245	68-718	309	71-156	373	71-448		
246	68-907	310	71-161.02	374	71-501		
247	68-908	311	71-161.03	375	71-501.02		
248	68-913	312	71-161.06	376	71-502		
249	68-915	313	71-161.07	377	71-502.01		
250	68-921	314	71-161.12	378	71-502.02		
251	68-922	315	71-161.13	379	71-502.03		
252	68-923	316	71-161.14	380	71-502.04		
253	68-924	317	71-161.16	381	71-503		
254	68-925	318	71-161.17	382	71-503.01		
255	68-926	319	71-161.20	383	71-504		
256	68-927	320	71-165	384	71-505		
257	68-928	321	71-169	385	71-507		
258	68-930	322	71-172.01	386	71-514.02		
259	68-931	323	71-172.02	387	71-516.02		
260	68-932	324	71-181	388	71-516.03		
261	68-940	325	71-188	389	71-516.04		
262	68-948	326	71-193.01	390	71-519		
263	68-949	327	71-193.13	391	71-520		
264	68-1001.01	328	71-193.15	392	71-521		
265	68-1002	329	71-193.18	393	71-522		
266	68-1007	330	71-193.19	394	71-523		
267	68-1008	331	71-193.22	395	71-524		
268	68-1014	332	71-1,104	396	71-529		
269	68-1015	333	71-1,104.01	397	71-532		
270	68-1016	334	71-1,107	398	71-541		
271	68-1017	335	71-1,107.06	399	71-543		
272	68-1095.01	336	71-1,107.07	400	71-601.01		
273	68-1101	337	71-1,107.08	401	71-602		
274	68-1103	338	71-1,107.16	402	71-602.01		
275	68-1104	339	71-1,132.05	403	71-604		
276	68-1105	340	71-1,132.53	404	71-604.01		
277	68-1204	341	71-1,135.02	405	71-604.05		
278	68-1205	342	71-1,136	406	71-605.01		
279	68-1206	343	71-1,141	407	71-605.02		
280	68-1207	344	71-1,142	408	71-606		
281	68-1207.01	345	71-1,143.01	409	71-608.01		
282	68-1210	346	71-1,147.26	410	71-609		
283	68-1402	347	71-1,147.28	411	71-610		
284	68-1403	348	71-1,147.31	412	71-611		
285	68-1405	349	71-1,147.33	413	71-612		
286	68-1503	350	71-1,147.44	414	71-614		
287	68-1514	351	71-1,147.45	415	71-615		
288	68-1521	352	71-1,147.48	416	71-616		
289	68-1522	353	71-1,147.53	417	71-616.03		
290	68-1523	354	71-1,147.59	418	71-616.04		
291	68-1732	355	71-1,154	419	71-617.02		
292	68-1802	356	71-1,190.01	420	71-617.06		
293	68-1807	357	71-1,206.05	421	71-617.07		

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423	71-617.09	487	71-1774	551	71-2617		
424	71-617.10	488	71-1798.01	552	71-2619		
425	71-617.11	489	71-1799	553	71-2620		
426	71-617.12	490	71-17,102	554	71-2621		
427	71-617.13	491	71-17,109	555	71-2622		
428	71-617.15	492	71-17,113	556	71-3101		
429	71-626	493	71-17,118	557	71-3102		
430	71-626.01	494	71-1802	558	71-3104		
431	71-627	495	71-1803	559	71-3305		
432	71-627.01	496	71-1804	560	71-3306		
433	71-627.02	497	71-1903	561	71-3401		
434	71-628	498	71-1909	562	71-3402		
435	71-629	499	71-1910	563	71-3406		
436	71-630	500	71-1913.01	564	71-3410		
437	71-634	501	71-1913.02	565	71-3502.01		
438	71-636	502	71-1913.03	566	71-3503		
439	71-639	503	71-1914	567	71-3504		
440	71-640.02	504	71-1915	568	71-3505		
441	71-640.03	505	71-1919	569	71-3508.03		
442	71-641	506	71-1922	570	71-3508.04		
443	71-644	507	71-2002	571	71-3513		
444	71-645	508	71-2003	572	71-3516.01		
445	71-646	509	71-2004	573	71-3517		
446	71-647	510	71-2006	574	71-3524		
447	71-648	511	71-2007	575	71-3526		
448	71-701	512	71-2009	576	71-3601		
449	71-702	513	71-2010	577	71-3610		
450	71-703	514	71-2011	578	71-3702		
451	71-705	515	71-2013	579	71-3706		
452	71-706	516	71-2014	580	71-4302		
453	71-707	517	71-2015	581	71-4303		
454	71-804	518	71-2081	582	71-4304		
455	71-805	519	71-2082	583	71-4305		
456	71-806	520	71-2084	584	71-4306		
457	71-809	521	71-2086	585	71-4401		
458	71-811	522	71-2096	586	71-4621		
459	71-812	523	71-2097	587	71-4624		
460	71-814	524	71-2098	588	71-4635		
461	71-916	525	71-2099	589	71-4701		
462	71-919	526	71-20,100	590	71-4728.05		
463	71-961	527	71-20,101	591	71-4737		
464	71-1001	528	71-20,103	592	71-4738		
465	71-1301	529	71-20,113	593	71-4739		
466	71-1333.01	530	71-2201	594	71-4740		
467	71-1340	531	71-2202	595	71-4741		
468	71-1341	532	71-2203	596	71-4742		
469	71-1356	533	71-2207	597	71-4743		
470	71-1363	534	71-2208	598	71-4744		
471	71-1367	535	71-2304	599	71-4813		
472	71-1368	536	71-2305	600	71-4816		
473	71-1405	537	71-2407	601	71-4819		
474	71-1617	538	71-2408	602	71-5175		
475	71-1626	539	71-2409	603	71-5192		
476	71-1628	540	71-2411	604	71-5197		
477	71-1628.05	541	71-2423	605	71-51,102		
478	71-1628.06	542	71-2431	606	71-51,103		
479	71-1628.07	543	71-2432	607	71-5205		
480	71-1630	544	71-2437	608	71-5301		
481	71-1631	545	71-2503	609	71-5302		
482	71-1635	546	71-2506	610	71-5303		
483	71-1637	547	71-2509	611	71-5304.01		
484	71-1710	548	71-2511	612	71-5304.02		
485	71-1729	549	71-2610	613	71-5305.01		

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615	71-5306	679	71-7614	743	81-663		
616	71-5310	680	71-7617	744	81-664		
617	71-5310.01	681	71-7618	745	81-676		
618	71-5311	682	71-7619	746	81-677		
619	71-5311.02	683	71-7620	747	81-678		
620	71-5318	684	71-7621	748	81-679		
621	71-5322	685	71-7622	749	81-680		
622	71-5402	686	71-7702	750	81-699		
623	71-5647	687	71-8008	751	81-6,110		
624	71-5649	688	71-8211	752	81-6,113		
625	71-5653	689	71-8228	753	81-1021		
626	71-5654	690	71-8231	754	81-1139.01		
627	71-5655	691	71-8236	755	81-1281		
628	71-5681	692	71-8239	756	81-1316		
629	71-5707	693	71-8312	757	81-15,103		
630	71-5710	694	71-8313	758	81-15,170		
631	71-5711	695	71-8503	759	81-15,189		
632	71-5713	696	72-249	760	81-15,210		
633	71-5714	697	75-303.01	761	81-15,245		
634	71-5803.04	698	75-303.02	762	81-2205		
635	71-5829.05	699	75-303.03	763	81-2206		
636	71-5859	700	76-1304	764	81-2213		
637	71-5903	701	76-14,102	765	81-2226		
638	71-6010	702	77-912	766	81-2229		
639	71-6018.01	703	77-2602	767	81-2248		
640	71-6019	704	77-2704.21	768	81-2249		
641	71-6021	705	77-27,162	769	81-2250		
642	71-6038	706	77-27,222	770	81-2251		
643	71-6042	707	79-217	771	81-2252		
644	71-6043	708	79-218	772	81-2255		
645	71-6045	709	79-219	773	81-2260		
646	71-6048	710	79-248	774	81-2265		
647	71-6053	711	79-249	775	81-2267		
648	71-6059	712	79-843	776	81-2268		
649	71-6065	713	79-1104.04	777	81-3602		
650	71-6068	714	79-1902	778	83-101.08		
651	71-6103	715	79-1903	779	83-107.01		
652	71-6208	716	79-1904	780	83-113		
653	71-6221	717	79-1905	781	83-114		
654	71-6301	718	80-314	782	83-115		
655	71-6303	719	80-316	783	83-121		
656	71-6309	720	80-317	784	83-126		
657	71-6319.15	721	80-318	785	83-130		
658	71-6319.28	722	80-319	786	83-305.03		
659	71-6319.30	723	80-320	787	83-324		
660	71-6319.31	724	80-321	788	83-336		
661	71-6321	725	80-322	789	83-348		
662	71-6602	726	81-101	790	83-363		
663	71-6721	727	81-102	791	83-365		
664	71-6724	728	81-502	792	83-366		
665	71-6725	729	81-502.01	793	83-373		
666	71-6732	730	81-601	794	83-374		
667	71-6743	731	81-602	795	83-376		
668	71-7012	732	81-604.01	796	83-379		
669	71-7105	733	81-604.02	797	83-380		
670	71-7107	734	81-604.03	798	83-381		
671	71-7110	735	81-637	799	83-382		
672	71-7434	736	81-638	800	83-383		
673	71-7450	737	81-639	801	83-384		
674	71-7457	738	81-640	802	83-385		
675	71-7603	739	81-642	803	83-386		
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	807		83-1204	6	47-632	11	84-1322
	808		83-1206	7	47-633	12	50-417.02
	809		83-1216	8	48-162.02	13	50-417.03
	810		84-1409	9	55-131	14	50-417.04
	811		85-134	10	60-1303	15	50-417.05
	812		86-570	11	60-1513	16	50-417.06
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	814		Omitted	13	66-1345	18	Omitted
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	3	37-414		20	77-2602		5
	4	37-426		21	81-188.02		6
	5	37-427		22	81-188.04		7
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	9	37-450		26	81-1108.22		2
	10	37-452		27	81-1201.21		3
	11	37-457		28	Omitted		4
	12	37-4,111		29	Omitted		5
	13	37-513		30	Omitted		6
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	17	37-803		34	Omitted		10
	18	37-811		35	Omitted		11
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	3	Omitted		43	Omitted		19
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	27	Omitted	58	21-2958		122	21-29,122
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	10	21-2910	74	21-2974		138	77-5509
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124	38-1,124	188	38-502	252	38-811		
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150	38-211	214	38-602	278	38-1016		
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156	38-305	220	38-608	284	38-1022		
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159	38-308	223	38-611	287	38-1025		
160	38-309	224	38-612	288	38-1026		
161	38-310	225	38-613	289	38-1027		
162	38-311	226	38-614	290	38-1028		
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335	38-1073	399	38-10,137	463	38-1130		
336	38-1074	400	38-10,138	464	38-1131		
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340	38-1078	404	38-10,142	468	38-1135		
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343	38-1081	407	38-10,145	471	38-1138		
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345	38-1083	409	38-10,147	473	38-1140		
346	38-1084	410	38-10,148	474	38-1141		
347	38-1085	411	38-10,149	475	38-1142		
348	38-1086	412	38-10,150	476	38-1143		
349	38-1087	413	38-10,151	477	38-1144		
350	38-1088	414	38-10,152	478	38-1145		
351	38-1089	415	38-10,153	479	38-1146		
352	38-1090	416	38-10,154	480	38-1147		
353	38-1091	417	38-10,155	481	38-1148		
354	38-1092	418	38-10,156	482	38-1149		
355	38-1093	419	38-10,157	483	38-1150		
356	38-1094	420	38-10,158	484	38-1151		
357	38-1095	421	38-10,159	485	38-1201		
358	38-1096	422	38-10,160	486	38-1202		
359	38-1097	423	38-10,161	487	38-1203		
360	38-1098	424	38-10,162	488	38-1204		
361	38-1099	425	38-10,163	489	38-1205		
362	38-10,100	426	38-10,164	490	38-1206		
363	38-10,101	427	38-10,165	491	38-1207		
364	38-10,102	428	38-10,166	492	38-1208		
365	38-10,103	429	38-10,167	493	38-1209		
366	38-10,104	430	38-10,168	494	38-1210		
367	38-10,105	431	38-10,169	495	38-1211		
368	38-10,106	432	38-10,170	496	38-1212		
369	38-10,107	433	38-10,171	497	38-1213		
370	38-10,108	434	38-1101	498	38-1214		
371	38-10,109	435	38-1102	499	38-1215		
372	38-10,110	436	38-1103	500	38-1216		
373	38-10,111	437	38-1104	501	38-1217		
374	38-10,112	438	38-1105	502	38-1218		
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507	38-1223	571	38-1507	635	38-1813		
508	38-1224	572	38-1508	636	38-1814		
509	38-1225	573	38-1509	637	38-1815		
510	38-1226	574	38-1510	638	38-1816		
511	38-1227	575	38-1511	639	38-1901		
512	38-1228	576	38-1512	640	38-1902		
513	38-1229	577	38-1513	641	38-1903		
514	38-1230	578	38-1514	642	38-1904		
515	38-1231	579	38-1515	643	38-1905		
516	38-1232	580	38-1516	644	38-1906		
517	38-1233	581	38-1517	645	38-1907		
518	38-1234	582	38-1518	646	38-1908		
519	38-1235	583	38-1601	647	38-1909		
520	38-1236	584	38-1602	648	38-1910		
521	38-1237	585	38-1603	649	38-1911		
522	38-1301	586	38-1604	650	38-1912		
523	38-1302	587	38-1605	651	38-1913		
524	38-1303	588	38-1606	652	38-1914		
525	38-1304	589	38-1607	653	38-1915		
526	38-1305	590	38-1608	654	38-1916		
527	38-1306	591	38-1609	655	38-1917		
528	38-1307	592	38-1610	656	38-1918		
529	38-1308	593	38-1611	657	38-1919		
530	38-1309	594	38-1612	658	38-1920		
531	38-1310	595	38-1613	659	38-2001		
532	38-1311	596	38-1614	660	38-2002		
533	38-1312	597	38-1615	661	38-2003		
534	38-1313	598	38-1616	662	38-2004		
535	38-1314	599	38-1617	663	38-2005		
536	38-1315	600	38-1618	664	38-2006		
537	38-1401	601	38-1619	665	38-2007		
538	38-1402	602	38-1620	666	38-2008		
539	38-1403	603	38-1621	667	38-2009		
540	38-1404	604	38-1622	668	38-2010		
541	38-1405	605	38-1623	669	38-2011		
542	38-1406	606	38-1624	670	38-2012		
543	38-1407	607	38-1625	671	38-2013		
544	38-1408	608	38-1701	672	38-2014		
545	38-1409	609	38-1702	673	38-2015		
546	38-1410	610	38-1703	674	38-2016		
547	38-1411	611	38-1704	675	38-2017		
548	38-1412	612	38-1705	676	38-2018		
549	38-1413	613	38-1706	677	38-2019		
550	38-1414	614	38-1707	678	38-2020		
551	38-1415	615	38-1708	679	38-2021		
552	38-1416	616	38-1709	680	38-2022		
553	38-1417	617	38-1710	681	38-2023		
554	38-1418	618	38-1711	682	38-2024		
555	38-1419	619	38-1712	683	38-2025		
556	38-1420	620	38-1713	684	38-2026		
557	38-1421	621	38-1714	685	38-2027		
558	38-1422	622	38-1715	686	38-2028		
559	38-1423	623	38-1801	687	38-2029		
560	38-1424	624	38-1802	688	38-2030		
561	38-1425	625	38-1803	689	38-2031		
562	38-1426	626	38-1804	690	38-2032		
563	38-1427	627	38-1805	691	38-2033		
564	38-1428	628	38-1806	692	38-2034		
565	38-1501	629	38-1807	693	38-2035		
566	38-1502	630	38-1808	694	38-2036		
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699	38-2041	763	38-2207	827	38-2412		
700	38-2042	764	38-2208	828	38-2413		
701	38-2043	765	38-2209	829	38-2414		
702	38-2044	766	38-2210	830	38-2415		
703	38-2045	767	38-2211	831	38-2416		
704	38-2046	768	38-2212	832	38-2417		
705	38-2047	769	38-2213	833	38-2418		
706	38-2048	770	38-2214	834	38-2419		
707	38-2049	771	38-2215	835	38-2420		
708	38-2050	772	38-2216	836	38-2421		
709	38-2051	773	38-2217	837	38-2422		
710	38-2052	774	38-2218	838	38-2423		
711	38-2053	775	38-2219	839	38-2424		
712	38-2054	776	38-2220	840	38-2425		
713	38-2055	777	38-2221	841	38-2501		
714	38-2056	778	38-2222	842	38-2502		
715	38-2057	779	38-2223	843	38-2503		
716	38-2058	780	38-2224	844	38-2504		
717	38-2059	781	38-2225	845	38-2505		
718	38-2060	782	38-2226	846	38-2506		
719	38-2061	783	38-2227	847	38-2507		
720	38-2101	784	38-2228	848	38-2508		
721	38-2102	785	38-2229	849	38-2509		
722	38-2103	786	38-2230	850	38-2510		
723	38-2104	787	38-2231	851	38-2511		
724	38-2105	788	38-2232	852	38-2512		
725	38-2106	789	38-2233	853	38-2513		
726	38-2107	790	38-2234	854	38-2514		
727	38-2108	791	38-2235	855	38-2515		
728	38-2109	792	38-2236	856	38-2516		
729	38-2110	793	38-2301	857	38-2517		
730	38-2111	794	38-2302	858	38-2518		
731	38-2112	795	38-2303	859	38-2519		
732	38-2114	796	38-2304	860	38-2520		
733	38-2115	797	38-2305	861	38-2521		
734	38-2116	798	38-2306	862	38-2522		
735	38-2117	799	38-2307	863	38-2523		
736	38-2118	800	38-2308	864	38-2524		
737	38-2119	801	38-2309	865	38-2525		
738	38-2120	802	38-2310	866	38-2526		
739	38-2121	803	38-2311	867	38-2527		
740	38-2122	804	38-2312	868	38-2528		
741	38-2123	805	38-2313	869	38-2529		
742	38-2125	806	38-2314	870	38-2530		
743	38-2126	807	38-2315	871	38-2531		
744	38-2127	808	38-2316	872	38-2601		
745	38-2128	809	38-2317	873	Omitted		
746	38-2129	810	38-2318	874	38-2602		
747	38-2130	811	38-2319	875	38-2603		
748	38-2131	812	38-2320	876	38-2604		
749	38-2132	813	38-2321	877	38-2605		
750	38-2133	814	38-2322	878	38-2606		
751	38-2134	815	38-2323	879	38-2607		
752	38-2135	816	38-2401	880	38-2608		
753	38-2136	817	38-2402	881	38-2609		
754	38-2137	818	38-2403	882	38-2610		
755	38-2138	819	38-2404	883	38-2611		
756	38-2139	820	38-2405	884	38-2612		
757	38-2201	821	38-2406	885	38-2613		
758	38-2202	822	38-2407	886	38-2614		
759	38-2203	823	38-2408	887	38-2615		
760	38-2204	824	38-2409	888	Omitted		

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891	38-2618	955	38-2859	1019	38-2926		
892	38-2619	956	38-2860	1020	38-2927		
893	38-2620	957	38-2861	1021	38-2928		
894	38-2621	958	38-2862	1022	38-2929		
895	38-2622	959	38-2863	1023	38-3001		
896	38-2623	960	38-2864	1024	38-3002		
897	38-2801	961	38-2865	1025	38-3003		
898	38-2802	962	38-2866	1026	38-3004		
899	38-2803	963	38-2867	1027	38-3005		
900	38-2804	964	38-2868	1028	38-3006		
901	38-2805	965	38-2869	1029	38-3007		
902	38-2806	966	38-2870	1030	38-3008		
903	38-2807	967	38-2871	1031	38-3009		
904	38-2808	968	38-2872	1032	38-3010		
905	38-2809	969	38-2873	1033	38-3011		
906	38-2810	970	38-2874	1034	38-3012		
907	38-2811	971	38-2875	1035	38-3101		
908	38-2812	972	38-2876	1036	38-3102		
909	38-2813	973	38-2877	1037	38-3103		
910	38-2814	974	38-2878	1038	38-3104		
911	38-2815	975	38-2879	1039	38-3105		
912	38-2816	976	38-2880	1040	38-3106		
913	38-2817	977	38-2881	1041	38-3107		
914	38-2818	978	38-2882	1042	38-3108		
915	38-2819	979	38-2883	1043	38-3109		
916	38-2820	980	38-2884	1044	38-3110		
917	38-2821	981	38-2885	1045	38-3111		
918	38-2822	982	38-2886	1046	38-3112		
919	38-2823	983	38-2887	1047	38-3113		
920	38-2824	984	38-2888	1048	38-3114		
921	38-2825	985	38-2889	1049	38-3115		
922	38-2826	986	Omitted	1050	38-3116		
923	38-2827	987	Omitted	1051	38-3117		
924	38-2828	988	38-2898	1052	38-3118		
925	38-2829	989	38-2899	1053	38-3119		
926	38-2830	990	38-28,100	1054	38-3120		
927	38-2831	991	38-28,101	1055	38-3121		
928	38-2832	992	38-28,102	1056	38-3122		
929	38-2833	993	38-28,103	1057	38-3123		
930	38-2834	994	38-2901	1058	38-3124		
931	38-2835	995	38-2902	1059	38-3125		
932	38-2836	996	38-2903	1060	38-3126		
933	38-2837	997	38-2904	1061	38-3127		
934	38-2838	998	38-2905	1062	38-3128		
935	38-2839	999	38-2906	1063	38-3129		
936	38-2840	1000	38-2907	1064	38-3130		
937	38-2841	1001	38-2908	1065	38-3131		
938	38-2842	1002	38-2909	1066	38-3132		
939	38-2843	1003	38-2910	1067	38-3201		
940	38-2844	1004	38-2911	1068	38-3202		
941	38-2845	1005	38-2912	1069	38-3203		
942	38-2846	1006	38-2913	1070	38-3204		
943	38-2847	1007	38-2914	1071	38-3205		
944	38-2848	1008	38-2915	1072	38-3206		
945	38-2849	1009	38-2916	1073	38-3207		
946	38-2850	1010	38-2917	1074	38-3208		
947	38-2851	1011	38-2918	1075	38-3209		
948	38-2852	1012	38-2919	1076	38-3210		
949	38-2853	1013	38-2920	1077	38-3211		
950	38-2854	1014	38-2921	1078	38-3212		
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	29		42-351	6	53-406		24
	30		42-353	7	53-407		79-1241.03
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	32		42-364	9	53-409		79-1241.02
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	38		43-104.13	2	53-163	LB 610	§ 1
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	40		43-2,113	4	60-6,197.03		70-1901
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	44		43-3342.01	3	69-2708		70-1903
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	48		Omitted	2	48-120.04		70-1905
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	7		18-2130	5	Omitted		9-1,101
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	9		18-2142.03	2	32-515		9-232.01
	10		18-2142.04	3	32-607		3
	11		Omitted	4	79-1012		9-232.02
	12		Omitted	5	79-1018.01		4
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	3		13-927	8	79-1201		9-239
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	5		81-8,234	10	79-1205		9-241.03
	6		81-8,235	11	79-1208		7
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	8		Omitted	13	79-1212		8
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	21	Omitted	4	32-612	3	8-2603	
LB 641	§ 1	32-567	5	32-808	4	8-2604	
	2	32-604	6	32-904	5	8-2605	
	3	32-606	7	32-906	6	8-2606	
	4	77-3442	8	32-909	7	8-2607	
	5	79-4,117	9	32-1001	8	8-2608	
	6	79-4,125	10	32-1002	9	8-2609	
	7	79-4,126	11	32-1004	10	8-2610	
	8	79-4,128	12	32-1010	11	8-2611	
	9	79-528	13	32-1027	12	8-2612	
	10	79-611	14	32-1041	13	8-2613	
	11	79-769	15	32-1049	14	8-2614	
	12	79-1001	16	Omitted	15	8-2615	
	13	79-1003	17	Omitted	16	48-237	
	14	79-1003.01	LB 653	§ 1	79-757	17	Omitted
	15	79-1007.02		2	79-758	LB 677	§ 1
	16	79-1007.03		3	79-760		54-2423
	17	79-1007.04		4	79-760.03		Omitted
	18	79-1007.05		5	79-760.01	LB 681	§ 1
	19	79-1007.06		6	79-760.02		60-1411.01
	20	79-1007.07		7	79-760.04		60-1419
	21	79-1007.08		8	79-760.05	LB 701	§ 1
	22	79-1007.09		9	Omitted		2-967
	23	79-1013	LB 653A		Omitted		2-968
	24	79-1014	LB 661	§ 1	86-125		2-945.01
	25	79-1015		2	86-140		2-958.02
	26	79-1008.02		3	86-313		5
	27	79-1015.01		4	86-316		2-3202
	28	79-1022		5	86-318		6
	29	79-1073		6	86-320.01		2-3226.01
	30	79-1073.01		7	86-322		7
	31	79-10,120		8	86-323		2-3226.02
	32	79-10,126.01		9	86-420		8
	33	79-11,150		10	86-422		2-3226.03
	34	79-1204		11	86-429.01		9
	35	79-2101		12	86-433		2-3226.04
	36	79-2102		13	86-434		10
	37	32-555.01		14	86-435		2-3226.05
	38	79-2102.01		15	86-436		11
	39	79-2103		16	86-442		2-3225
	40	79-2104		17	86-443		12
	41	79-2107		18	86-449.01		2-3231
	42	79-2110		19	86-450.02		13
	43	79-2111		20	86-450.03		13-808
	44	79-2112		21	86-456		14
	45	79-2113		22	86-456.01		13-2530
	46	79-2114		23	86-457		15
	47	79-2115		24	86-459		46-229.04
	48	79-2116		25	86-461		16
	49	32-546.01		26	Omitted		2-32,115
	50	79-2117		27	Omitted		17
	51	79-2118		28	Omitted		46-601.01
	52	Omitted		29	Omitted		18
	53	Omitted		30	Omitted		46-602
	54	Omitted		31	Omitted		19
LB 641A		Omitted	LB 664	§ 1	81-3541		46-609
LB 646	§ 1	32-230		2	Omitted		20
	2	32-232	LB 674	§ 1	8-2601	LB 701A	21
							46-702
							22
							46-707
							23
							46-715
							24
							46-1212
							25
							61-218
							26
							61-210
							27
							66-1345
							28
							66-1345.01
							29
							66-1345.02
							30
							Omitted
							31
							Omitted
							32
							61-219
							33
							77-3442
							34
							Omitted
							35
							Omitted
							36
							Omitted

APPENDIX

CROSS REFERENCE TABLE

Legislative Bills, 100th Legislature
First Session, 2007

Showing the date each act went into effect.
The One Hundredth Session of the Legislature adjourned
May 31, 2007.

LB No.	Effective Date	LB No.	Effective Date
1	September 1, 2007		19, 20, 22, 23, 24, 25, 26,
2	September 1, 2007		28, 29, 30, 31, 32, 33, 34,
5	September 1, 2007		35, 36, 37, 38, 39, 40, 41,
8	September 1, 2007		42, 43, 44, 45, 46, 47, 48,
11	September 1, 2007		49, 50, 51, 52, 53, 54, 55,
12	September 1, 2007		56, 57, 58, 59, 60, 61, 62,
12A	September 1, 2007		63, 64, 65, 66, 67, 68, 69,
21	February 1, 2007		70, 71, 72, 73, 75, and 78
24	February 1, 2007		of this act become
25	September 1, 2007		operative on September 1,
26	September 1, 2007		2007. The other sections
28	September 1, 2007		of this act become
34	September 1, 2007		operative on March 20,
35	February 15, 2007		2007.
43	September 1, 2007	132	September 1, 2007
44	September 1, 2007	136	September 1, 2007
63	September 1, 2007	142	September 1, 2007
64	September 1, 2007	143	September 1, 2007
67	September 1, 2007	144	May 17, 2007
69	September 1, 2007	145	September 1, 2007
73	July 1, 2007	147	September 1, 2007
	(operative date)	148	September 1, 2007
73A	May 31, 2007	150	September 1, 2007
74	July 1, 2007	152	September 1, 2007
	(operative date)	160	September 1, 2007
79	September 1, 2007	161	September 1, 2007
80	September 1, 2007	166	March 8, 2007
80A	September 1, 2007	167	February 10, 2007
83	March 20, 2007	185	Sections 1, 50, 51, and 55
88	May 22, 2007		of this act become
94	September 1, 2007		operative on March 15,
97	September 1, 2007		2007. Sections 5, 6, 7, 8,
99	March 8, 2007		9, 10, 11, 12, 13, 14, 15,
108	March 8, 2007		16, 17, 18, 19, 20, 21, 22,
110	February 15, 2007		23, 24, 25, 26, 27, 28, 29,
111	September 1, 2007		30, 31, 32, 33, 34, 35, 36,
115	September 1, 2007		37, 38, 39, 40, 41, 53, and
117	September 1, 2007		54 of this act become
124	Sections 1, 2, 8, 9, 10, 11,		operative on July 1, 2007.
	12, 13, 14, 15, 16, 17, 18,		The other sections of this

APPENDIX

LB No.	Effective Date	LB No.	Effective Date
	act become operative on	263	September 1, 2007
	September 1, 2007.	265	Sections 3, 4, 5, 6, 7, 8, 9,
186	September 1, 2007		10, 11, 12, 35, and 39 of
188	May 17, 2007		this act become operative
191	March 8, 2007		on July 1, 2007. Sections
192	September 1, 2007		24, 25, 26, 27, 28, 29, 30,
199	September 1, 2007		31, 32, 34, and 38 of this
203	September 1, 2007		act become operative on
206	September 1, 2007		January 1, 2008. Sections
207	September 1, 2007		1, 2, 13, 14, 15, 16, 17,
208	September 1, 2007		18, 19, 20, 21, 36, and 40
211	May 31, 2007		of this act become
211A	May 31, 2007		operative on September 1,
213	September 1, 2007		2007. Sections 22, 23, 33,
214	September 1, 2007		37, and 41 of this act
218	September 1, 2007		become operative on June
219	May 17, 2007		1, 2007.
221	September 1, 2007	274	July 1, 2008
223	Sections 1, 3, 4, 5, 6, 7, 8,		(operative date)
	12, 13, 14, 15, 22, 23, 24,	277	September 1, 2007
	and 35 of this act become	283	September 1, 2007
	operative on January 1,	283A	September 1, 2007
	2008. The other sections	286	September 1, 2007
	of this act become	289	September 1, 2007
	operative on September 1,	290	September 1, 2007
	2007.	292	September 1, 2007
226	May 17, 2007	292A	September 1, 2007
227	September 1, 2007	296	July 1, 2007
231	September 1, 2007		(operative date)
232	September 1, 2007	298	September 1, 2007
233	September 1, 2007	299	September 1, 2007
236	September 1, 2007	304	September 1, 2007
236A	September 1, 2007	305	October 1, 2007
237	September 1, 2007		(operative date)
239	September 1, 2007	305A	September 1, 2007
247	Sections 58, 59, 60, 61,	307	September 1, 2007
	62, 63, 64, 65, 66, 67, 68,	311	September 1, 2007
	69, 70, 71, 72, 73, 74, 75,	313	September 1, 2007
	76, 77, 78, 79, 80, 81, 82,	315	February 15, 2007
	83, 84, 85, 90, and 91 of	316	May 31, 2007
	this act become operative	316A	May 31, 2007
	on December 1, 2008.	317	May 22, 2007
	The other sections of this	318	July 1, 2007
	act become operative on		(operative date)
	June 1, 2007.	319	July 1, 2007
247A	September 1, 2007		(operative date)
248	January 1, 2008	320	July 1, 2007
	(operative date)		(operative date)
252	September 1, 2007	321	July 1, 2007
255	April 3, 2007	322	Sections 1, 2, 3, 4, 5, 6, 7,
256	September 1, 2007		8, 9, 10, 11, 12, 13, 14,

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LB No.	Effective Date	LB No.	Effective Date
	15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, and 41 of this act become operative on July 1, 2007. Section 43 of this act becomes operative on August 1, 2007. The other sections of this act become operative on May 22, 2007.		deemed to begin on or after January 1, 2007, under the Internal Revenue Code of 1986, as amended. Sections 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 24, 29, and 31 of this act become operative on October 1, 2007. Sections 1, 2, 3, 4, 6, 7, 8, 26, 28, and 32 of this act become operative on May 19, 2007.
323	Sections 1, 2, 4, and 6 of this act become operative on July 1, 2007. The other sections of this act become operative on May 22, 2007.	367A	September 1, 2007
		368	January 1, 2008 (operative date)
		368A	September 1, 2007
324	May 31, 2007	373	September 1, 2007
324A	May 31, 2007	374	July 1, 2007 (operative date)
328	Sections 12, 13, 14, 15, 16, 17, and 19 of this act become operative on May 31, 2007. The other sections of this act become operative on September 1, 2007.	377	July 1, 2007
		377A	May 31, 2007
328A	May 31, 2007	382	September 1, 2007
333	March 8, 2007	388	September 1, 2007
334	July 1, 2007 (operative date)	389	April 3, 2007
		390	September 1, 2007
		396	May 17, 2007
		415	January 1, 2008 (operative date)
		415A	September 1, 2007
338	January 1, 2007 (operative date)	422	March 8, 2007
		424	September 1, 2007
339	September 1, 2007	425	September 1, 2007
341	February 2, 2007	425A	September 1, 2007
342	July 1, 2007 (operative date)	434	September 1, 2007
		435	May 17, 2007
342A	July 1, 2007 (operative date)	441	September 1, 2007
		441A	September 1, 2007
343	January 1, 2007 (operative date)	445	September 1, 2007
		449	September 1, 2007
343A	September 1, 2007	456	September 1, 2007
347	September 1, 2007	457	September 1, 2007
349	September 1, 2007	463	Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63,
351	September 1, 2007		
351A	September 1, 2007		
358	September 1, 2007		
364	September 1, 2007		
367	Sections 5, 19, 20, 21, 22, 23, 25, 27, and 30 of this act become operative for taxable years beginning or		

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LB No.	Effective Date	LB No.	Effective Date
	64, 65, 66, 67, 68, 69, 70,		329, 330, 331, 332, 333,
	71, 72, 73, 74, 75, 76, 77,		334, 335, 336, 337, 338,
	78, 79, 80, 81, 82, 83, 84,		339, 340, 341, 342, 343,
	85, 86, 87, 88, 89, 90, 91,		344, 345, 346, 347, 348,
	92, 93, 94, 95, 96, 97, 98,		349, 350, 351, 352, 353,
	99, 100, 101, 102, 103,		354, 355, 356, 357, 358,
	104, 105, 106, 107, 108,		359, 360, 361, 362, 363,
	109, 110, 111, 112, 113,		364, 365, 366, 367, 368,
	114, 115, 116, 117, 118,		369, 370, 371, 372, 373,
	119, 120, 121, 122, 123,		374, 375, 376, 377, 378,
	124, 125, 126, 127, 128,		379, 380, 381, 382, 383,
	129, 130, 131, 132, 133,		384, 385, 386, 387, 388,
	134, 135, 136, 137, 138,		389, 390, 391, 392, 393,
	139, 140, 141, 142, 143,		394, 395, 396, 397, 398,
	144, 145, 146, 147, 148,		399, 400, 401, 402, 403,
	149, 150, 151, 152, 153,		404, 405, 406, 407, 408,
	154, 155, 156, 157, 158,		409, 410, 411, 412, 413,
	159, 160, 161, 162, 163,		414, 415, 416, 417, 418,
	164, 165, 166, 167, 168,		419, 420, 421, 422, 423,
	169, 170, 171, 172, 173,		424, 425, 426, 427, 428,
	174, 175, 176, 177, 178,		429, 430, 431, 432, 433,
	179, 180, 181, 182, 183,		434, 435, 436, 437, 438,
	184, 185, 186, 187, 188,		439, 440, 441, 442, 443,
	189, 190, 191, 192, 193,		444, 445, 446, 447, 448,
	194, 195, 196, 197, 198,		449, 450, 451, 452, 453,
	199, 200, 201, 202, 203,		454, 455, 456, 457, 458,
	204, 205, 206, 207, 208,		459, 460, 461, 462, 463,
	209, 210, 211, 212, 213,		464, 465, 466, 467, 468,
	214, 215, 216, 217, 218,		469, 470, 471, 472, 473,
	219, 220, 221, 222, 223,		474, 475, 476, 477, 478,
	224, 225, 226, 227, 228,		479, 480, 481, 482, 483,
	229, 230, 231, 232, 233,		484, 485, 486, 487, 488,
	234, 235, 236, 237, 238,		489, 490, 491, 492, 493,
	239, 240, 241, 242, 243,		494, 495, 496, 497, 498,
	244, 245, 246, 247, 248,		499, 500, 501, 502, 503,
	249, 250, 251, 252, 253,		504, 505, 506, 507, 508,
	254, 255, 256, 257, 258,		509, 510, 511, 512, 513,
	259, 260, 261, 262, 263,		514, 515, 516, 517, 518,
	264, 265, 266, 267, 268,		519, 520, 521, 522, 523,
	269, 270, 271, 272, 273,		524, 525, 526, 527, 528,
	274, 275, 276, 277, 278,		529, 530, 531, 532, 533,
	279, 280, 281, 282, 283,		534, 535, 536, 537, 538,
	284, 285, 286, 287, 288,		539, 540, 541, 542, 543,
	289, 290, 291, 292, 293,		544, 545, 546, 547, 548,
	294, 295, 296, 297, 298,		549, 550, 551, 552, 553,
	299, 300, 301, 302, 303,		554, 555, 556, 557, 558,
	304, 305, 306, 307, 308,		559, 560, 561, 562, 563,
	309, 310, 311, 312, 313,		564, 565, 566, 567, 568,
	314, 315, 316, 317, 318,		569, 570, 571, 572, 573,
	319, 320, 321, 322, 323,		574, 575, 576, 577, 578,
	324, 325, 326, 327, 328,		579, 580, 581, 582, 583,

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LB No.	Effective Date	LB No.	Effective Date
584,	585,	839,	840,
586,	587,	841,	842,
588,	589,	843,	844,
590,	591,	845,	846,
592,	593,	847,	848,
594,	595,	849,	850,
596,	597,	851,	852,
598,	599,	853,	854,
600,	601,	855,	856,
602,	603,	857,	858,
604,	605,	859,	860,
606,	607,	861,	862,
608,	609,	863,	864,
610,	611,	865,	866,
612,	613,	867,	868,
614,	615,	869,	870,
616,	617,	871,	872,
618,	619,	873,	874,
620,	621,	875,	876,
622,	623,	877,	878,
624,	625,	879,	880,
626,	627,	881,	882,
628,	629,	883,	884,
630,	631,	885,	886,
632,	633,	887,	888,
634,	635,	889,	890,
636,	637,	891,	892,
638,	639,	893,	894,
640,	641,	895,	896,
642,	643,	897,	898,
644,	645,	899,	900,
646,	647,	901,	902,
648,	649,	903,	904,
650,	651,	905,	906,
652,	653,	907,	908,
654,	655,	909,	910,
656,	657,	911,	912,
658,	659,	913,	914,
660,	661,	915,	916,
662,	663,	917,	918,
664,	665,	919,	920,
666,	667,	921,	922,
668,	669,	923,	924,
670,	671,	925,	926,
672,	673,	927,	928,
674,	675,	929,	930,
676,	677,	931,	932,
678,	679,	933,	934,
680,	681,	935,	936,
682,	683,	937,	938,
684,	685,	939,	940,
686,	687,	941,	942,
688,	689,	943,	944,
689,	690,	945,	946,
691,	692,	947,	948,
693,	694,	949,	950,
695,	696,	951,	952,
697,	698,	953,	954,
699,	700,	955,	956,
701,	702,	957,	958,
703,	704,	959,	960,
705,	706,	961,	962,
707,	708,	963,	964,
709,	710,	965,	966,
711,	712,	967,	968,
713,	714,	969,	970,
715,	716,	971,	972,
717,	718,	973,	974,
719,	720,	975,	976,
721,	722,	977,	978,
723,	724,	979,	980,
725,	726,	981,	982,
727,	728,	983,	984,
729,	730,	985,	986,
731,	732,	987,	988,
733,	734,	989,	990,
735,	736,	991,	992,
737,	738,	993,	994,
739,	740,	995,	996,
741,	742,	997,	998,
743,	744,	999,	1000,
745,	746,	1001,	1002,
747,	748,	1003,	1004,
749,	750,	1005,	1006,
751,	752,	1007,	1008,
753,	754,	1009,	1010,
755,	756,	1011,	1012,
757,	758,	1013,	1014,
759,	760,	1015,	1016,
761,	762,	1017,	1018,
763,	764,	1019,	1020,
765,	766,	1021,	1022,
767,	768,	1023,	1024,
769,	770,	1025,	1026,
771,	772,	1027,	1028,
773,	774,	1029,	1030,
775,	776,	1031,	1032,
777,	778,	1033,	1034,
779,	780,	1035,	1036,
781,	782,	1037,	1038,
783,	784,	1039,	1040,
785,	786,	1041,	1042,
787,	788,	1043,	1044,
789,	790,	1045,	1046,
791,	792,	1047,	1048,
793,	794,	1049,	1050,
795,	796,	1051,	1052,
797,	798,	1053,	1054,
799,	800,	1055,	1056,
801,	802,	1057,	1058,
803,	804,	1059,	1060,
805,	806,	1061,	1062,
807,	808,	1063,	1064,
809,	810,	1065,	1066,
811,	812,	1067,	1068,
813,	814,	1069,	1070,
815,	816,	1071,	1072,
817,	818,	1073,	1074,
819,	820,		
821,	822,		
823,	824,		
825,	826,		
827,	828,		
829,	830,		
831,	832,		
833,	834,		
835,	836,		
837,	838,		

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LB No.	Effective Date	LB No.	Effective Date
1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090, 1091, 1092, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279,		1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1318, and 1319 of this act become operative on December 1, 2008. The other sections of this act become operative on September 1, 2007.	
		464	September 1, 2007
		470	September 1, 2007
		470A	September 1, 2007
		471	May 17, 2007
		472	September 1, 2007
		481	May 17, 2007
		482	July 1, 2007 (operative date)
		482A	May 25, 2007
		497	April 5, 2007
		502	September 1, 2007
		504	September 1, 2007
		508	May 17, 2007
		516	May 25, 2007
		516A	May 25, 2007
		527	September 1, 2007
		530	September 1, 2007
		537	September 1, 2007
		540	May 31, 2007
		540A	May 31, 2007
		542	May 25, 2007
		549	September 1, 2007
		549A	September 1, 2007
		551	June 1, 2007
		551A	September 1, 2007
		554	Sections 42 and 48 of this act become operative on July 1, 2008. The other sections of this act become operative on January 1, 2008.
		554A	September 1, 2007
		561	September 1, 2007
		562	September 1, 2007
		564	May 17, 2007
		568	April 5, 2007

APPENDIX

LB No.	Effective Date	LB No.	Effective Date
570	January 1, 2010 (operative date)	610	September 1, 2007
573	Sections 1, 2, 3, 4, 5, 6, 7, 8, and 9 of this act become operative on January 1, 2008. The other sections of this act become operative on September 1, 2007.	629	May 22, 2007
578	September 1, 2007	629A	May 22, 2007
580	September 1, 2007	636	September 1, 2007
588	Sections 1, 2, 5, 6, and 7 of this act become operative on September 1, 2007. Sections 3, 4, and 8 of this act become operative on January 1, 2008.	638	September 1, 2007
588A	September 1, 2007	641	September 1, 2007
596	May 17, 2007	641A	September 1, 2007
603	Sections 1, 16, 17, 18, 19, 20, 21, 22, 28, 31, 32, 33, 36, and 39 of this act become operative on July 1, 2008. Sections 4, 7, 8, 10, 12, 34, 35, 38, and 40 of this act become operative on May 31, 2007. The other sections of this act become operative on September 1, 2007.	646	September 1, 2007
603A	September 1, 2007	653	September 1, 2007
		653A	September 1, 2007
		661	Sections 16, 17, 18, 19, 20, 21, 22, 23, and 29 of this act become operative on July 1, 2007. Sections 1, 2, and 28 of this act become operative on August 1, 2007. The other sections of this act become operative on April 5, 2007.
		664	September 1, 2007
		674	Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 17 of this act become operative on September 1, 2007. Section 16 of this act becomes operative on September 1, 2008.
		677	April 12, 2007
		681	September 1, 2007
		701	May 2, 2007
		701A	May 2, 2007

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