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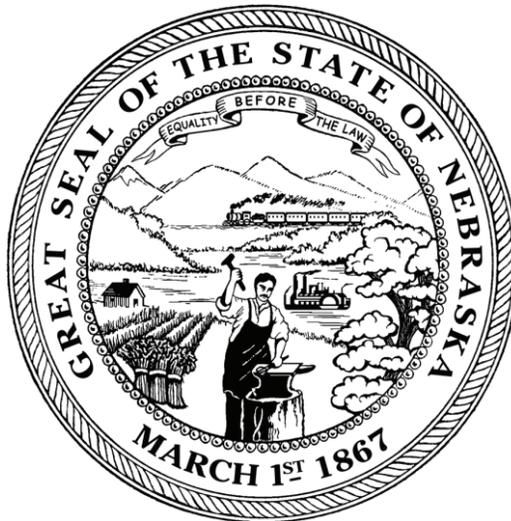


REVISED STATUTES OF NEBRASKA

2014 CUMULATIVE SUPPLEMENT

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Revisor of Statutes

For the benefit of the
State of Nebraska

CHAPTER 61

NATURAL RESOURCES

Article.

2. Department of Natural Resources. 61-210 to 61-222.

ARTICLE 2

DEPARTMENT OF NATURAL RESOURCES

Section

- 61-210. Department of Natural Resources Cash Fund; created; use; investment.
 61-217. Repealed. Laws 2010, LB 682, § 1.
 61-218. Water Resources Cash Fund; created; use; investment; eligibility for funding; annual report; contents; Nebraska Environmental Trust Fund; grant application; use of funds; legislative intent; department; establish subaccount.
 61-219. Repealed. Laws 2010, LB 683, § 1.
 61-220. State Treasurer; 2012 transfer to Water Resources Cash Fund.
 61-221. State Treasurer; 2013 transfer to Water Resources Cash Fund.
 61-222. Water Sustainability Fund; created; use; investment.

61-210 Department of Natural Resources Cash Fund; created; use; investment.

The Department of Natural Resources Cash Fund is created. The State Treasurer shall credit to such fund such money as is specifically appropriated or reappropriated by the Legislature. The State Treasurer shall also credit such fund with payments, if any, accepted for services rendered by the department and fees collected pursuant to subsection (6) of section 46-606 and section 61-209. The funds made available to the Department of Natural Resources by the United States, through the Natural Resources Conservation Service of the Department of Agriculture or through any other agencies, shall be credited to the fund by the State Treasurer. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The Department of Natural Resources shall allocate money from the fund to pay costs of the programs or activities of the department. The Director of Administrative Services, upon receipt of proper vouchers approved by the department, shall issue warrants on the fund, and the State Treasurer shall countersign and pay from, but never in excess of, the amounts to the credit of the fund. Transfers may be made from the fund to the General Fund at the direction of the Legislature.

Source: Laws 1937, c. 8, § 13, p. 109; C.S.Supp.,1941, § 2-1913; R.S. 1943, § 2-1547; Laws 1959, c. 6, § 25, p. 90; Laws 1969, c. 584, § 28, p. 2358; Laws 1973, LB 188, § 2; Laws 1987, LB 29, § 2; Laws 1995, LB 7, § 6; Laws 1999, LB 403, § 2; R.S.Supp.,1999, § 2-1547; Laws 2000, LB 900, § 10; Laws 2001, LB 667, § 26; Laws 2002, LB 458, § 8; Laws 2005, LB 335, § 81; Laws 2007, LB701, § 26; Laws 2009, First Spec. Sess., LB3, § 38.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

61-217 Repealed. Laws 2010, LB 682, § 1.

61-218 Water Resources Cash Fund; created; use; investment; eligibility for funding; annual report; contents; Nebraska Environmental Trust Fund; grant application; use of funds; legislative intent; department; establish subaccount.

(1) The Water Resources Cash Fund is created. The fund shall be administered by the Department of Natural Resources. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The State Treasurer shall credit to the fund such money as is (a) transferred to the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, (c) donated as gifts, bequests, or other contributions to such fund from public or private entities, (d) made available by any department or agency of the United States if so directed by such department or agency, and (e) allocated pursuant to section 81-15,175.

(3) The fund shall be expended by the department (a) to aid management actions taken to reduce consumptive uses of water or to enhance streamflows or ground water recharge in river basins, subbasins, or reaches which are deemed by the department overappropriated pursuant to section 46-713 or fully appropriated pursuant to section 46-714 or are bound by an interstate compact or decree or a formal state contract or agreement, (b) for purposes of projects or proposals described in the grant application as set forth in subdivision (2)(h) of section 81-15,175, and (c) to the extent funds are not expended pursuant to subdivisions (a) and (b) of this subsection, the department may conduct a statewide assessment of short-term and long-term water management activities and funding needs to meet statutory requirements in sections 46-713 to 46-718 and 46-739 and any requirements of an interstate compact or decree or formal state contract or agreement. The fund shall not be used to pay for administrative expenses or any salaries for the department or any political subdivision.

(4) It is the intent of the Legislature that three million three hundred thousand dollars be transferred each fiscal year from the General Fund to the Water Resources Cash Fund for FY2011-12 through FY2018-19, except that for FY2012-13 it is the intent of the Legislature that four million seven hundred thousand dollars be transferred from the General Fund to the Water Resources Cash Fund.

(5)(a) Expenditures from the Water Resources Cash Fund may be made to natural resources districts eligible under subsection (3) of this section for activities to either achieve a sustainable balance of consumptive water uses or assure compliance with an interstate compact or decree or a formal state contract or agreement and shall require a match of local funding in an amount equal to or greater than forty percent of the total cost of carrying out the eligible activity. The department shall, no later than August 1 of each year, beginning in 2007, determine the amount of funding that will be made available to natural resources districts from the Water Resources Cash Fund and notify natural resources districts of this determination. The department shall adopt and promulgate rules and regulations governing application for and use of the

Water Resources Cash Fund by natural resources districts. Such rules and regulations shall, at a minimum, include the following components:

(i) Require an explanation of how the planned activity will achieve a sustainable balance of consumptive water uses or will assure compliance with an interstate compact or decree or a formal state contract or agreement as required by section 46-715 and the controls, rules, and regulations designed to carry out the activity; and

(ii) A schedule of implementation of the activity or its components, including the local match as set forth in subdivision (5)(a) of this section.

(b) Any natural resources district that fails to implement and enforce its controls, rules, and regulations as required by section 46-715 shall not be eligible for funding from the Water Resources Cash Fund until it is determined by the department that compliance with the provisions required by section 46-715 has been established.

(6) The Department of Natural Resources shall submit electronically an annual report to the Legislature no later than October 1 of each year, beginning in the year 2007, that shall detail the use of the Water Resources Cash Fund in the previous year. The report shall provide:

(a) Details regarding the use and cost of activities carried out by the department; and

(b) Details regarding the use and cost of activities carried out by each natural resources district that received funds from the Water Resources Cash Fund.

(7)(a) Prior to the application deadline for fiscal year 2011-12, the Department of Natural Resources shall apply for a grant of nine million nine hundred thousand dollars from the Nebraska Environmental Trust Fund, to be paid out in three annual installments of three million three hundred thousand dollars. The purposes listed in the grant application shall be consistent with the uses of the Water Resources Cash Fund provided in this section and shall be used to aid management actions taken to reduce consumptive uses of water, to enhance streamflows, to recharge ground water, or to support wildlife habitat in any river basin determined to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713.

(b) If the application is granted, funds received from such grant shall be remitted to the State Treasurer for credit to the Water Resources Cash Fund for the purpose of supporting the projects set forth in the grant application. The department shall include in its grant application documentation that the Legislature has authorized a transfer of three million three hundred thousand dollars from the General Fund into the Water Resources Cash Fund for each of fiscal years 2011-12 and 2012-13 and has stated its intent to transfer three million three hundred thousand dollars to the Water Resources Cash Fund for fiscal year 2013-14.

(c) It is the intent of the Legislature that the department apply for an additional three-year grant that would begin in fiscal year 2014-15 if the criteria established in subsection (4) of section 81-15,175 are achieved.

(8) The department shall establish a subaccount within the Water Resources Cash Fund for the accounting of all money received as a grant from the Nebraska Environmental Trust Fund as the result of an application made pursuant to subsection (7) of this section. At the end of each calendar month, the department shall calculate the amount of interest earnings accruing to the

subaccount and shall notify the State Treasurer who shall then transfer a like amount from the Water Resources Cash Fund to the Nebraska Environmental Trust Fund.

Source: Laws 2007, LB701, § 25; Laws 2009, First Spec. Sess., LB3, § 39; Laws 2010, LB689, § 1; Laws 2010, LB993, § 1; Laws 2011, LB229, § 1; Laws 2012, LB782, § 87; Laws 2012, LB950, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

61-219 Repealed. Laws 2010, LB 683, § 1.

61-220 State Treasurer; 2012 transfer to Water Resources Cash Fund.

The State Treasurer shall transfer \$600,000 from the General Fund to the Water Resources Cash Fund on or before June 30, 2012, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services, pursuant to section 61-218.

Source: Laws 2011, LB229, § 4.

61-221 State Treasurer; 2013 transfer to Water Resources Cash Fund.

The State Treasurer shall transfer \$600,000 from the General Fund to the Water Resources Cash Fund on or before June 30, 2013, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services, pursuant to section 61-218.

Source: Laws 2011, LB229, § 5.

61-222 Water Sustainability Fund; created; use; investment.

The Water Sustainability Fund is created in the Department of Natural Resources. The fund shall be used in accordance with the provisions established in Legislative Bill 1098, One Hundred Third Legislature, Second Session, 2014, and for costs directly related to the administration of the fund.

The fund shall consist of money transferred to the fund by the Legislature, other funds as appropriated by the Legislature, and money donated as gifts, bequests, or other contributions from public or private entities. Funds made available by any department or agency of the United States may also be credited to the fund if so directed by such department or 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. Investment earnings from investment of money in the fund shall be credited to the fund.

It is the intent of the Legislature that twenty-one million dollars be transferred from the General Fund to the Water Sustainability Fund in fiscal year 2014-15 and that eleven million dollars be transferred from the General Fund to the Water Sustainability Fund each fiscal year beginning in fiscal year 2015-16.

Source: Laws 2014, LB906, § 7.
Effective date April 2, 2014.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

CHAPTER 64

NOTARIES PUBLIC

Article.

1. General Provisions.
 - (a) Appointment and Powers. 64-101 to 64-113.
 - (c) Rules and Regulations. 64-119.

ARTICLE 1

GENERAL PROVISIONS

(a) APPOINTMENT AND POWERS

Section

- 64-101. Appointment; qualifications; term.
 64-104. Notary public; commission; renewal; procedure.
 64-105.01. Notary public; disqualified; when.
 64-107. Powers and duties; certificate or records; receipt in evidence.
 64-113. Removal; grounds; procedure; penalty.

(c) RULES AND REGULATIONS

- 64-119. Rules and regulations.

(a) APPOINTMENT AND POWERS

64-101 Appointment; qualifications; term.

(1) The Secretary of State may appoint and commission such number of persons to the office of notary public as he or she deems necessary.

(2) There shall be one class of such appointments which shall be valid in the entire state and referred to as general notaries public.

(3) The term effective date, as used with reference to a commission of a notary public, shall mean the date of the commission unless the commission states when it goes into effect, in which event that date shall be the effective date.

(4) A general commission may refer to the office as notary public and shall contain a provision showing that the person therein named is authorized to act as a notary public anywhere within the State of Nebraska or, in lieu thereof, may contain the word general or refer to the office as general notary public.

(5) No person shall be appointed a notary public unless he or she has taken and passed a written examination on the duties and obligations of a notary public as provided in section 64-101.01.

(6) No appointment shall be made if such applicant has been convicted of (a) a felony or (b) a crime involving fraud or dishonesty within the previous five years.

(7) No appointment shall be made until such applicant has attained the age of nineteen years nor unless such applicant certifies to the Secretary of State under oath that he or she has carefully read and understands the laws relating to the duties of notaries public and will, if commissioned, faithfully discharge the duties pertaining to the office and keep records according to law.

(8) No person shall be appointed a notary public unless he or she resides in the State of Nebraska, except that the Secretary of State may appoint and commission a person as a notary public who resides in a state that borders the State of Nebraska if such person is employed in or has a regular place of work or business in this state and the Secretary of State has obtained evidence of an address of the physical location of such employment or place of work or business prior to such appointment and commission.

(9) Each person appointed a notary public shall hold office for a term of four years from the effective date of his or her commission unless sooner removed.

Source: Laws 1869, § 1, p. 20; G.S.1873, p. 493; Laws 1883, c. 58, § 1, p. 248; R.S.1913, § 5517; Laws 1919, c. 123, § 1, p. 293; Laws 1921, c. 99, § 2, p. 365; C.S.1922, § 4813; C.S.1929, § 64-101; Laws 1943, c. 136, § 1, p. 467; R.S.1943, § 64-101; Laws 1945, c. 145, § 1, p. 487; Laws 1951, c. 205, § 1, p. 763; Laws 1967, c. 396, § 2, p. 1241; Laws 1971, LB 88, § 1; Laws 1976, LB 622, § 1; Laws 2004, LB 315, § 2; Laws 2012, LB398, § 2.

64-104 Notary public; commission; renewal; procedure.

Commissions for general notaries public may be renewed within thirty days prior to the date of expiration by filing a renewal application along with the payment of the fee prescribed in section 33-102 and a new bond with the Secretary of State. The bond required for a renewal of such commission shall be in the same manner and form as provided in section 64-102. The renewal application shall be in the manner and form as prescribed by the Secretary of State. Any renewal application for such commission made after the date of expiration of the commission shall be made in the same manner as a new application for such commission as a general notary public.

Source: Laws 1967, c. 396, § 9, p. 1245; R.S.1943, (1986), § 64-116; Laws 1994, LB 1004, § 5; Laws 2012, LB398, § 3.

64-105.01 Notary public; disqualified; when.

A notary public is disqualified from performing a notarial act as authorized by Chapter 64, articles 1 and 2, if the notary:

(1) Is a spouse, ancestor, descendant, or sibling of the principal, including in-law, step, or half relatives;

(2) Except in the performance of duties pursuant to sections 64-211 to 64-215, has a financial or beneficial interest in the transaction other than receipt of the ordinary notarial fee or is individually named as a party to the transaction; or

(3) Does not understand the acknowledgment or notarial certificate used to certify the performance of his or her duties.

Source: Laws 2004, LB 315, § 7; Laws 2012, LB398, § 4.

64-107 Powers and duties; certificate or records; receipt in evidence.

A notary public is authorized and empowered, within the state: (1) To administer oaths and affirmations in all cases; (2) to take depositions, acknowledgments, and proofs of the execution of deeds, mortgages, powers of attorney, and other instruments in writing, to be used or recorded in this or another state; and (3) to exercise and perform such other powers and duties as

authorized by the laws of this state. Over his or her signature and official seal, he or she shall certify the performance of such duties so exercised and performed under this section. Such certificate shall be received in all courts of this state as presumptive evidence of the facts therein certified to.

Source: Laws 1869, § 6, p. 22; G.S.1873, p. 494; R.S.1913, § 5522; C.S.1922, § 4818; C.S.1929, § 64-106; R.S.1943, § 64-107; Laws 1945, c. 145, § 7, p. 492; Laws 1967, c. 396, § 6, p. 1243; Laws 2012, LB398, § 5.

64-113 Removal; grounds; procedure; penalty.

(1) Whenever charges of malfeasance in office are preferred to the Secretary of State against any notary public in this state, or whenever the Secretary of State has reasonable cause to believe any notary public in this state is guilty of acts of malfeasance in office, the Secretary of State may appoint any disinterested person, not related by consanguinity to either the notary public or person preferring the charges, and authorized by law to take testimony of witnesses by deposition, to notify such notary public to appear before him or her on a day and at an hour certain, after at least ten days from the day of service of such notice. At such appearance, the notary public may show cause as to why his or her commission should not be canceled or temporarily revoked. The appointee may issue subpoenas to require the attendance and testimony of witnesses and the production of any pertinent records, papers, or documents, may administer oaths, and may accept any evidence he or she deems pertinent to a proper determination of the charge. The notary public may appear, at such time and place, and cross-examine witnesses and produce witnesses in his or her behalf. Upon the receipt of such examination, duly certified in the manner prescribed for taking depositions to be used in suits in the district courts of this state, the Secretary of State shall examine the same, and if therefrom he or she finds that the notary public is guilty of acts of malfeasance in office, he or she may remove the person charged from the office of notary public or temporarily revoke such person's commission. Within fifteen days after such removal or revocation and notice thereof, such notary public shall deposit, with the Secretary of State, the commission as notary public and notarial seal. The commission shall be canceled or temporarily revoked by the Secretary of State. A person so removed from office shall be forever disqualified from holding the office of notary public. A person whose commission is temporarily revoked shall be returned his or her commission and seal upon completion of the revocation period and passing the examination described in section 64-101.01. The fees for taking such testimony shall be paid by the state at the same rate as fees for taking depositions by notaries public. The failure of the notary public to deposit his or her commission and seal with the Secretary of State as required by this section shall subject him or her to a penalty of one thousand dollars, to be recovered in the name of the state.

(2) For purposes of this section, malfeasance in office means, while serving as a notary public, (a) failure to follow the requirements and procedures for notarial acts provided for in Chapter 64, articles 1 and 2, (b) violating the confidentiality provisions of section 71-6911, or (c) being convicted of a felony or other crime involving fraud or dishonesty.

Source: Laws 1869, § 14, p. 25; G.S.1873, p. 497; R.S.1913, § 5529; C.S.1922, § 4825; C.S.1929, § 64-113; R.S.1943, § 64-113; Laws

1945, c. 145, § 10, p. 493; Laws 1967, c. 396, § 8, p. 1244; Laws 2004, LB 315, § 11; Laws 2011, LB690, § 2; Laws 2012, LB398, § 6.

(c) RULES AND REGULATIONS

64-119 Rules and regulations.

The Secretary of State may adopt and promulgate rules and regulations relating to the administration of, but not inconsistent with, the provisions of sections 64-101 to 64-118.

Source: Laws 2012, LB398, § 7.

CHAPTER 66

OILS, FUELS, AND ENERGY

Article.

4. Motor Vehicle Fuel Tax. 66-482 to 66-4,144.
5. Transportation of Fuels. 66-525.
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ARTICLE 4

MOTOR VEHICLE FUEL TAX

Section

- 66-482. Terms, defined.
- 66-486. Motor fuel tax; collection; commission.
- 66-488. Producer, supplier, distributor, wholesaler, importer, and exporter; return; contents.
- 66-489.02. Producer, supplier, distributor, wholesaler, or importer; tax on average wholesale price of gasoline; credit to Highway Trust Fund; use; allocation.
- 66-4,100. Highway Cash Fund; Roads Operations Cash Fund; created; use; investment.
- 66-4,144. Highway Restoration and Improvement Bond Fund; Highway Cash Fund; maintain adequate balance; setting of excise tax rates; procedure; Department of Roads; provide information.

66-482 Terms, defined.

For purposes of sections 66-482 to 66-4,149:

(1) Motor vehicle shall have the same definition as in section 60-339;

(2) Motor vehicle fuel shall include all products and fuel commonly or commercially known as gasoline, including casing head or natural gasoline, and shall include any other liquid and such other volatile and inflammable liquids as may be produced, compounded, or used for the purpose of operating or propelling motor vehicles, motorboats, or aircraft or as an ingredient in the manufacture of such fuel. Agricultural ethyl alcohol produced for use as a motor vehicle fuel shall be considered a motor vehicle fuel. Motor vehicle fuel shall not include the products commonly known as methanol, kerosene oil, kerosene distillate, crude petroleum, naphtha, and benzine with a boiling point over two hundred degrees Fahrenheit, residuum gas oil, smudge oil, leaded

automotive racing fuel with an American Society of Testing Materials research method octane number in excess of one hundred five, and any petroleum product with an initial boiling point under two hundred degrees Fahrenheit, a ninety-five percent distillation (recovery) temperature in excess of four hundred sixty-four degrees Fahrenheit, an American Society of Testing Materials research method octane number less than seventy, and an end or dry point of distillation of five hundred seventy degrees Fahrenheit maximum;

(3) Agricultural ethyl alcohol shall mean ethyl alcohol produced from cereal grains or agricultural commodities grown within the continental United States and which is a finished product that is a nominally anhydrous ethyl alcohol meeting American Society for Testing and Materials D4806 standards. For the purpose of sections 66-482 to 66-4,149, the purity of the ethyl alcohol shall be determined excluding denaturant and the volume of alcohol blended with gasoline for motor vehicle fuel shall include the volume of any denaturant required pursuant to law;

(4) Alcohol blend shall mean a blend of agricultural ethyl alcohol in gasoline or other motor vehicle fuel, such blend to contain not less than five percent by volume of alcohol;

(5) Supplier shall mean any person who owns motor fuels imported by barge, barge line, or pipeline and stored at a barge, barge line, or pipeline terminal in this state;

(6) Distributor shall mean any person who acquires ownership of motor fuels directly from a producer or supplier at or from a barge, barge line, pipeline terminal, or ethanol or biodiesel facility in this state;

(7) Wholesaler shall mean any person, other than a producer, supplier, distributor, or importer, who acquires motor fuels for resale;

(8) Retailer shall mean any person who acquires motor fuels from a producer, supplier, distributor, wholesaler, or importer for resale to consumers of such fuel;

(9) Importer shall mean any person who owns motor fuels at the time such fuels enter the State of Nebraska by any means other than barge, barge line, or pipeline. Importer shall not include a person who imports motor fuels in a tank directly connected to the engine of a motor vehicle, train, watercraft, or airplane for purposes of providing fuel to the engine to which the tank is connected;

(10) Exporter shall mean any person who acquires ownership of motor fuels from any licensed producer, supplier, distributor, wholesaler, or importer exclusively for use or resale in another state;

(11) Gross gallons shall mean measured gallons without adjustment or correction for temperature or barometric pressure;

(12) Diesel fuel shall mean all combustible liquids and biodiesel which are suitable for the generation of power for diesel-powered vehicles, except that diesel fuel shall not include kerosene;

(13) Compressed fuel shall mean any fuel defined as compressed fuel in section 66-6,100;

(14) Person shall mean any individual, firm, partnership, limited liability company, company, agency, association, corporation, state, county, municipality, or other political subdivision. Whenever a fine or imprisonment is prescribed or imposed in sections 66-482 to 66-4,149, the word person as applied

to a partnership, a limited liability company, or an association shall mean the partners or members thereof;

(15) Department shall mean the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue;

(16) Semiannual period shall mean either the period which begins on January 1 and ends on June 30 of each year or the period which begins on July 1 and ends on December 31 of each year;

(17) Producer shall mean any person who manufactures agricultural ethyl alcohol or biodiesel at an ethanol or biodiesel facility in this state;

(18) Highway shall mean every way or place generally open to the use of the public for the purpose of vehicular travel, even though such way or place may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair, or reconstruction;

(19) Kerosene shall mean kerosene meeting the specifications as found in the American Society for Testing and Materials publication D3699 entitled Standard Specifications for Kerosene;

(20) Biodiesel shall mean mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats which conform to American Society for Testing and Materials D6751 specifications for use in diesel engines. Biodiesel refers to the pure fuel before blending with diesel fuel;

(21) Motor fuels shall mean motor vehicle fuel, diesel fuel, aircraft fuel, or compressed fuel;

(22) Ethanol facility shall mean a plant which produces agricultural ethyl alcohol; and

(23) Biodiesel facility shall mean a plant which produces biodiesel.

Source: Laws 1925, c. 172, § 1, p. 448; Laws 1929, c. 150, § 1, p. 525; C.S.1929, § 66-401; Laws 1935, c. 3, § 15, p. 63; Laws 1935, Spec. Sess., c. 13, § 1, p. 86; Laws 1939, c. 86, § 1, p. 366; C.S.Supp.,1941, § 66-401; R.S.1943, § 66-401; Laws 1955, c. 246, § 1, p. 777; Laws 1963, c. 377, § 1, p. 1214; Laws 1963, c. 375, § 2, p. 1206; Laws 1981, LB 360, § 1; Laws 1987, LB 523, § 5; Laws 1988, LB 1039, § 1; R.S.1943, (1990), § 66-401; Laws 1991, LB 627, § 9; Laws 1993, LB 121, § 395; Laws 1994, LB 1160, § 55; Laws 1995, LB 182, § 28; Laws 1996, LB 1121, § 1; Laws 1998, LB 1161, § 14; Laws 2004, LB 479, § 1; Laws 2004, LB 983, § 5; Laws 2005, LB 274, § 267; Laws 2008, LB846, § 2; Laws 2014, LB851, § 6.

Operative date July 18, 2014.

Cross References

For additional definitions, see section 66-712.

66-486 Motor fuel tax; collection; commission.

(1) In lieu of the expense of collecting and remitting the motor vehicle fuel tax and furnishing the security pursuant to Chapter 66, article 4, and complying with the statutes and rules and regulations related thereto, the producer, supplier, distributor, wholesaler, or importer shall be entitled to deduct and withhold a commission of five percent on the first five thousand dollars and two

and one-half percent upon all amounts above five thousand dollars remitted each reporting period.

(2) In lieu of the expense of collecting and remitting the diesel fuel tax and furnishing the security pursuant to Chapter 66, article 4, and complying with the statutes and rules and regulations related thereto, the producer, supplier, distributor, wholesaler, or importer shall be entitled to deduct and withhold a commission of two percent upon the first five thousand dollars and one-half of one percent upon all amounts in excess of five thousand dollars remitted each reporting period.

(3) Except as otherwise provided in Chapter 66, article 4, the per-gallon amount of the tax shall be added to the selling price of every gallon of such motor fuels sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax. The tax shall be a direct tax on the retail or ultimate consumer precollected for the purpose of convenience and facility to the consumer. The levy and assessment on the producer, supplier, distributor, wholesaler, or importer as specified in Chapter 66, article 4, shall be as agents of the state for the precollection of the tax. The provisions of this section shall in no way affect the method of collecting the tax as provided in Chapter 66, article 4. The tax imposed by this section shall be collected and paid at the time, in the manner, and by those persons specified in Chapter 66, article 4.

(4) In consideration of receiving the commission, the producer, supplier, distributor, wholesaler, or importer shall not be entitled to any deductions, credits, or refunds arising out of such producer's, supplier's, distributor's, wholesaler's, or importer's failure or inability to collect any such taxes from any subsequent purchaser of motor fuels.

(5) For purposes of this section, reporting period means calendar month unless otherwise provided by rules and regulations of the department, but under no circumstance shall such reporting period extend beyond an annual basis.

(6) A producer, supplier, distributor, wholesaler, or importer shall not be entitled to the commission provided under subsection (1) or (2) of this section for the amount of any understatement of or refund of any such taxes collected as a result of a final assessment occurring pursuant to a notice of deficiency determination under section 66-722.

Source: Laws 1933, c. 106, § 2, p. 435; C.S.Supp.,1941, § 66-403; R.S. 1943, § 66-407; Laws 1969, c. 528, § 3, p. 2160; Laws 1973, LB 528, § 4; R.S.1943, (1990), § 66-407; Laws 1991, LB 627, § 13; Laws 1994, LB 1160, § 59; Laws 1998, LB 1161, § 15; Laws 2001, LB 168, § 1; Laws 2004, LB 983, § 9; Laws 2012, LB727, § 16.

66-488 Producer, supplier, distributor, wholesaler, importer, and exporter; return; contents.

(1) Every producer, supplier, distributor, wholesaler, importer, and exporter who engages in the sale, distribution, delivery, and use of motor fuels shall render and have on file with the department a return reporting the number of gallons of motor fuels, based on gross gallons, received, imported, or exported and unloaded and emptied or caused to be received, imported, or exported and unloaded and emptied by such producer, supplier, distributor, wholesaler, or

importer in the State of Nebraska and the number of gallons of motor fuels produced, refined, manufactured, blended, or compounded by such producer, supplier, distributor, wholesaler, or importer within the State of Nebraska, during the preceding reporting period, and defining the nature of such motor fuels. The return shall also show such information as the department reasonably requires for the proper administration and enforcement of sections 66-482 to 66-4,149. The return shall contain a declaration, by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the return and shall be in lieu of such verification. The return shall be signed by the producer, supplier, distributor, wholesaler, importer, or exporter or a principal officer, general agent, managing agent, attorney in fact, chief accountant, or other responsible representative of the producer, supplier, distributor, wholesaler, importer, or exporter, and such return shall be entitled to be received in evidence in all courts of this state and shall be prima facie evidence of the facts therein stated. The producer, supplier, distributor, wholesaler, importer, or exporter shall file the return in such format as prescribed by the department on or before the twentieth day of the next succeeding calendar month following the reporting period to which it relates. If the final filing date for such return falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. The return shall be considered filed on time if transmitted or postmarked before midnight of the final filing date.

(2) For purposes of this section, reporting period means calendar month unless otherwise provided by rules and regulations of the department, but under no circumstance shall such reporting period extend beyond an annual basis.

Source: Laws 1925, c. 172, § 5, p. 450; Laws 1927, c. 151, § 2, p. 406; Laws 1929, c. 149, § 4, p. 522; Laws 1929, c. 166, § 1, p. 572; C.S.1929, § 66-405; Laws 1931, c. 113, § 1, p. 331; Laws 1933, c. 106, § 4, p. 436; Laws 1933, c. 110, § 3, p. 448; Laws 1935, c. 161, § 1, p. 586; Laws 1935, Spec. Sess., c. 16, § 1, p. 127; Laws 1937, c. 148, § 1, p. 566; Laws 1939, c. 86, § 2, p. 367; Laws 1941, c. 133, § 1, p. 522; C.S.Supp.,1941, § 66-405; Laws 1943, c. 138, § 2(1), p. 473; Laws 1943, c. 141, § 1(1), p. 482; R.S.1943, § 66-409; Laws 1963, c. 376, § 2, p. 1210; R.S.1943, (1990), § 66-409; Laws 1991, LB 627, § 15; Laws 1994, LB 1160, § 61; Laws 2000, LB 1067, § 3; Laws 2001, LB 168, § 3; Laws 2004, LB 983, § 11; Laws 2008, LB846, § 4; Laws 2012, LB727, § 17.

66-489.02 Producer, supplier, distributor, wholesaler, or importer; tax on average wholesale price of gasoline; credit to Highway Trust Fund; use; allocation.

(1) For tax periods beginning on and after July 1, 2009, at the time of filing the return required by section 66-488, the producer, supplier, distributor, wholesaler, or importer shall, in addition to the other taxes provided for by law, pay a tax at the rate of five percent of the average wholesale price of gasoline for the gallons of the motor fuels as shown by the return, except that there shall be no tax on the motor fuels reported if they are otherwise exempted by sections 66-482 to 66-4,149.

(2) The department shall calculate the average wholesale price of gasoline on April 1, 2009, and on each April 1 and October 1 thereafter. The average wholesale price on April 1 shall apply to returns for the tax periods beginning on and after July 1, and the average wholesale price on October 1 shall apply to returns for the tax periods beginning on and after January 1. The average wholesale price shall be determined using data available from the State Energy Office and shall be an average wholesale price per gallon of gasoline sold in the state over the previous six-month period, excluding any state or federal excise tax or environmental fees. The change in the average wholesale price between two six-month periods shall be adjusted so that the increase or decrease in the tax provided for in this section or section 66-6,109.02 does not exceed one cent per gallon.

(3) All sums of money received under this section shall be credited to the Highway Trust Fund. Credits and refunds of such tax allowed to producers, suppliers, distributors, wholesalers, or importers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated as follows:

- (a) Sixty-six percent to the Highway Cash Fund for the Department of Roads;
- (b) Seventeen percent to the Highway Allocation Fund for allocation to the various counties for road purposes; and
- (c) Seventeen percent to the Highway Allocation Fund for allocation to the various municipalities for street purposes.

Source: Laws 2008, LB846, § 11; Laws 2012, LB727, § 18.

66-4,100 Highway Cash Fund; Roads Operations Cash Fund; created; use; investment.

The Highway Cash Fund and the Roads Operations Cash Fund are hereby created. If bonds are issued pursuant to subsection (2) of section 39-2223, the balance of the share of the Highway Trust Fund allocated to the Department of Roads and deposited into the Highway Restoration and Improvement Bond Fund as provided in subsection (6) of section 39-2215 and the balance of the money deposited in the Highway Restoration and Improvement Bond Fund as provided in section 39-2215.01 shall be transferred by the State Treasurer, on or before the last day of each month, to the Highway Cash Fund. If no bonds are issued pursuant to subsection (2) of section 39-2223, the share of the Highway Trust Fund allocated to the Department of Roads shall be transferred by the State Treasurer on or before the last day of each month to the Highway Cash Fund.

The Legislature may direct the State Treasurer to transfer funds from the Highway Cash Fund to the Roads Operations Cash Fund. Both funds shall be expended by the department (1) for acquiring real estate, road materials, equipment, and supplies to be used in the construction, reconstruction, improvement, and maintenance of state highways, (2) for the construction, reconstruction, improvement, and maintenance of state highways, including grading, drainage, structures, surfacing, roadside development, landscaping, and other incidentals necessary for proper completion and protection of state highways as the department shall, after investigation, find and determine shall be for the best interests of the highway system of the state, either independent of or in conjunction with federal-aid money for highway purposes, (3) for the share of the department of the cost of maintenance of state aid bridges, (4) for planning

studies in conjunction with federal highway funds for the purpose of analyzing traffic problems and financial conditions and problems relating to state, county, township, municipal, federal, and all other roads in the state and for incidental costs in connection with the federal-aid grade crossing program for roads not on state highways, (5) for tests and research by the department or proportionate costs of membership, tests, and research of highway organizations when participated in by the highway departments of other states, (6) for the payment of expenses and costs of the Board of Examiners for County Highway and City Street Superintendents as set forth in section 39-2310, (7) for support of the public transportation assistance program established under section 13-1209 and the intercity bus system assistance program established under section 13-1213, and (8) for purchasing from political or governmental subdivisions or public corporations, pursuant to section 39-1307, any federal-aid transportation funds available to such entities.

Any money in the Highway Cash Fund and the Roads Operations Cash Fund not needed for current operations of the department shall, as directed by the Director-State Engineer to the State Treasurer, be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, subject to approval by the board of each investment. All income received as a result of such investment shall be placed in the Highway Cash Fund.

Source: Laws 1937, c. 148, § 4, p. 570; Laws 1939, c. 84, § 2, p. 363; Laws 1941, c. 133, § 2, p. 525; Laws 1941, c. 134, § 10, p. 536; C.S.Supp.,1941, § 66-411; Laws 1943, c. 138, § 1(4), p. 472; Laws 1943, c. 139, § 1(4), p. 479; R.S.1943, § 66-424; Laws 1947, c. 214, § 4, p. 698; Laws 1953, c. 131, § 15, p. 410; Laws 1965, c. 393, § 1, p. 1257; Laws 1969, c. 530, § 3, p. 2171; Laws 1971, LB 21, § 1; Laws 1972, LB 1496, § 2; Laws 1986, LB 599, § 16; Laws 1988, LB 632, § 19; Laws 1990, LB 602, § 3; R.S. 1943, (1990), § 66-424; Laws 1994, LB 1066, § 51; Laws 1994, LB 1194, § 15; Laws 2004, LB 1144, § 4; Laws 2011, LB98, § 2.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

66-4,144 Highway Restoration and Improvement Bond Fund; Highway Cash Fund; maintain adequate balance; setting of excise tax rates; procedure; Department of Roads; provide information.

(1) In order to insure that an adequate balance in the Highway Restoration and Improvement Bond Fund is maintained to meet the debt service requirements of bonds to be issued by the commission under subsection (2) of section 39-2223, the Director-State Engineer shall certify to the department the excise tax rate to be imposed by sections 66-4,140 and 66-6,108 for each year during which such bonds are outstanding necessary to provide in each such year money equal in amount to not less than one hundred twenty-five percent of such year's bond principal and interest payment requirements. The department shall adjust the rate as certified by the Director-State Engineer. Such rate shall be in addition to the rate of excise tax set pursuant to subsection (2) of this section. Each such rate shall be effective from July 1 of a stated year through June 30 of the succeeding year or during such other period not longer than one year as the Director-State Engineer certifies to be consistent with the principal

and interest requirements of such bonds. Such excise tax rates set pursuant to this subsection may be increased, but such excise tax rates shall not be subject to reduction or elimination unless the Director-State Engineer has received from the State Highway Commission notice of reduced principal and interest requirements for such bonds, in which event the Director-State Engineer shall certify the new rate or rates to the department. The new rate or rates, if any, shall become effective on the first day of the following semiannual period.

(2) In order to insure that there is maintained an adequate Highway Cash Fund balance to meet expenditures from such fund as appropriated by the Legislature, by June 15 or five days after the adjournment of the regular legislative session each year, whichever is later, the Director-State Engineer shall certify to the department the excise tax rate to be imposed by sections 66-4,140 and 66-6,108. The department shall adjust the rate as certified by the Director-State Engineer to be effective from July 1 through June 30 of the succeeding year. The rate of excise tax for a given July 1 through June 30 period set pursuant to this subsection shall be in addition to and independent of the rate or rates of excise tax set pursuant to subsection (1) of this section for such period. The Director-State Engineer shall determine the cash and investment balances of the Highway Cash Fund at the beginning of each fiscal year under consideration and the estimated receipts to the Highway Cash Fund from each source which provides at least one million dollars annually to such fund. The rate of excise tax shall be an amount sufficient to meet the appropriations made from the Highway Cash Fund by the Legislature. Such rate shall be set in increments of one-tenth of one percent.

(3) The Department of Roads shall provide to the Legislative Fiscal Analyst an electronic copy of the information that is submitted to the Department of Revenue and used to set or adjust the excise tax rate.

(4) If the actual receipts received to date added to any projections or modified projections of deposits to the Highway Cash Fund for the current fiscal year are less than ninety-nine percent or greater than one hundred two percent of the appropriation for the current fiscal year, the Director-State Engineer shall certify to the department the adjustment in rate necessary to meet the appropriations made from the Highway Cash Fund by the Legislature. The department shall adjust the rate as certified by the Director-State Engineer to be effective on the first day of the following semiannual period.

(5) Nothing in this section shall be construed to abrogate the duties of the Department of Roads or attempt to change any highway improvement program schedule.

Source: Laws 1980, LB 722, § 5; Laws 1981, LB 172, § 5; Laws 1988, LB 632, § 21; R.S.1943, (1990), § 66-476; Laws 1991, LB 255, § 1; Laws 1994, LB 1160, § 77; Laws 1995, LB 182, § 36; Laws 1997, LB 397, § 5; Laws 1998, LB 1161, § 18; Laws 2000, LB 1067, § 10; Laws 2000, LB 1135, § 11; Laws 2004, LB 983, § 27; Laws 2012, LB782, § 88.

ARTICLE 5

TRANSPORTATION OF FUELS

Section

66-525. Carriers; transportation companies; shipments of motor fuel or diesel fuel into or out of state; reports; contents.

66-525 Carriers; transportation companies; shipments of motor fuel or diesel fuel into or out of state; reports; contents.

The department may require every railroad or railroad company, motor truck or motor truck transportation company, water transportation company, pipeline company, and other person transporting or bringing into the State of Nebraska or transporting from a refinery, ethanol or biodiesel facility, pipeline, pipeline terminal, or barge terminal within the State of Nebraska for the purpose of delivery within or export from this state any motor vehicle fuel or diesel fuel which is or may be produced and compounded for the purpose of operating or propelling any motor vehicle, to furnish a return on forms prescribed by the department to be delivered and on file in the office of the department by the twentieth day of each calendar month, showing all quantities of such motor vehicle fuel or diesel fuel transported during the preceding calendar month for which the report is made, giving the name of the consignee, the point at which delivery was made, the date of delivery, the method of delivery, the quantity of each such shipment, and such other information as the department requires.

Source: Laws 1957, c. 284, § 1, p. 1032; Laws 1963, c. 376, § 5, p. 1211; Laws 1967, c. 397, § 9, p. 1251; R.S.1943, (1990), § 66-426.01; Laws 1991, LB 627, § 26; R.S.Supp.,1992, § 66-4,104; Laws 1994, LB 1160, § 87; Laws 2000, LB 1067, § 12; Laws 2004, LB 983, § 34; Laws 2012, LB727, § 19.

ARTICLE 6**DIESEL, ALTERNATIVE, AND COMPRESSED FUEL TAXES**

(c) ALTERNATIVE FUEL TAX

Section

- 66-684. Repealed. Laws 2011, LB 289, § 41.
- 66-685. Repealed. Laws 2011, LB 289, § 41.
- 66-686. Repealed. Laws 2011, LB 289, § 41.
- 66-687. Repealed. Laws 2011, LB 289, § 41.
- 66-688. Repealed. Laws 2011, LB 289, § 41.
- 66-691. Repealed. Laws 2011, LB 289, § 41.
- 66-694. Repealed. Laws 2011, LB 289, § 41.
- 66-695. Repealed. Laws 2011, LB 289, § 41.

(d) COMPRESSED FUEL TAX

- 66-6,102. Gallon equivalent, defined.
- 66-6,110. Retailer; return; filing requirements.
- 66-6,113. Compressed fuel tax; collection; commission.

(c) ALTERNATIVE FUEL TAX

- 66-684 Repealed. Laws 2011, LB 289, § 41.**
- 66-685 Repealed. Laws 2011, LB 289, § 41.**
- 66-686 Repealed. Laws 2011, LB 289, § 41.**
- 66-687 Repealed. Laws 2011, LB 289, § 41.**
- 66-688 Repealed. Laws 2011, LB 289, § 41.**
- 66-691 Repealed. Laws 2011, LB 289, § 41.**

66-694 Repealed. Laws 2011, LB 289, § 41.

66-695 Repealed. Laws 2011, LB 289, § 41.

(d) COMPRESSED FUEL TAX

66-6,102 Gallon equivalent, defined.

Gallon equivalent means:

(1) For compressed natural gas, the amount of compressed natural gas that is deemed to be the energy equivalent of a gallon of gasoline according to the National Institute of Standards and Technology Handbook 130 entitled Uniform Regulation for the Method of Sale of Commodities, Paragraph 2.27.1.3; or

(2) For liquefied natural gas, the amount of liquefied natural gas that is deemed to be the energy equivalent of a gallon of diesel fuel at diesel fuel's lower heating value of one hundred twenty-eight thousand seven hundred British thermal units, which amount shall be equal to six and six-hundredths pounds of liquefied natural gas.

Source: Laws 1995, LB 182, § 6; Laws 2014, LB867, § 6.
Operative date January 1, 2015.

66-6,110 Retailer; return; filing requirements.

Each retailer shall file a tax return with the department on forms prescribed by the department. Annual returns are required if the retailer's yearly tax liability is less than two hundred fifty dollars. Quarterly returns are required if the retailer's yearly tax liability is at least two hundred fifty dollars but less than six thousand dollars. Monthly returns are required if the retailer's yearly tax liability is at least six thousand dollars. The return shall contain a declaration by the person making the return to the effect that the statements contained in the return are true and are made under penalties of law, which declaration has the same force and effect as a verification of the return and is in lieu of such verification. The return shall show such information as the department reasonably requires for the proper administration and enforcement of the Compressed Fuel Tax Act. The retailer shall file the return in such format as prescribed by the department on or before the twentieth day of the next succeeding calendar month following the reporting period to which it relates. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day is the final filing date. The return is filed on time if transmitted or postmarked before midnight of the final filing date.

Source: Laws 1995, LB 182, § 14; Laws 2000, LB 1067, § 24; Laws 2001, LB 168, § 11; Laws 2004, LB 983, § 43; Laws 2012, LB727, § 20.

66-6,113 Compressed fuel tax; collection; commission.

(1) In lieu of the expense of remitting the compressed fuel tax and complying with the statutes and rules and regulations related thereto, every retailer shall be entitled to deduct and withhold a commission of two percent upon the first five thousand dollars and one-half of one percent upon all amounts in excess of five thousand dollars remitted each tax period.

(2) Except as otherwise provided in the Compressed Fuel Tax Act, the per-gallon amount of the tax shall be added to the selling price of every gallon of such compressed fuel sold in this state and shall be collected from the

purchaser so that the ultimate consumer bears the burden of the tax. The tax shall be a direct tax on the retail or ultimate consumer precollected for the purpose of convenience and facility to the consumer. The levy and assessment on the retailer as specified in the act shall be as an agent of the state for the precollection of the tax. The provisions of this section shall in no way affect the method of collecting the tax as provided in the act. The tax imposed by this section shall be collected and paid at the time, in the manner, and by those persons specified in the act.

(3) In consideration of receiving the commission provided under subsection (1) of this section, the retailer shall not be entitled to any deductions, credits, or refunds arising out of such retailer's failure or inability to collect any such taxes from any subsequent purchaser of compressed fuel.

(4) A retailer shall not be entitled to a commission provided under subsection (1) of this section for the amount of any understatement or refund of any such taxes collected as a result of a final assessment occurring pursuant to a notice of deficiency determination under section 66-722.

Source: Laws 1995, LB 182, § 17; Laws 1998, LB 1161, § 22; Laws 2012, LB727, § 21.

ARTICLE 7

MOTOR FUEL TAX ENFORCEMENT AND COLLECTION

Section

- 66-712. Terms, defined.
- 66-719. Prohibited acts; financial penalties; department; powers; waiver of interest.
- 66-721. Notices; mailing requirements.
- 66-722. Returns; review by department; deficiency determination; procedure.
- 66-737. Repealed. Laws 2012, LB 727, § 58.
- 66-738. Motor Fuel Tax Enforcement and Collection Division; created within Department of Revenue; powers and duties; funding; contracts authorized.
- 66-739. Motor Fuel Tax Enforcement and Collection Cash Fund; created; use; investment.

66-712 Terms, defined.

For purposes of the Compressed Fuel Tax Act, the International Fuel Tax Agreement Act, and sections 66-482 to 66-4,149, 66-501 to 66-531, and 66-712 to 66-736:

(1) Department means the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue, except that for purposes of enforcement of the International Fuel Tax Agreement Act, department means the Division of Motor Carrier Services of the Department of Motor Vehicles;

(2) Motor fuel means any fuel defined as motor vehicle fuel in section 66-482, any fuel defined as diesel fuel in section 66-482, and any fuel defined as compressed fuel in section 66-6,100;

(3) Motor fuel laws means the Compressed Fuel Tax Act and sections 66-482 to 66-4,149, 66-501 to 66-531, and 66-712 to 66-736, except that for purposes of enforcement of the International Fuel Tax Agreement Act, motor fuel laws means the provisions of the International Fuel Tax Agreement Act and sections 66-712 to 66-736; and

(4) Person means any individual, firm, partnership, limited liability company, company, agency, association, corporation, state, county, municipality, or other

political subdivision. Whenever a fine, imprisonment, or both are prescribed or imposed in sections 66-712 to 66-736, the word person as applied to a partnership, a limited liability company, or an association means the partners or members thereof.

Source: Laws 1991, LB 627, § 107; Laws 1993, LB 121, § 398; Laws 1994, LB 1160, § 95; Laws 1995, LB 182, § 52; Laws 1996, LB 1218, § 19; Laws 2004, LB 983, § 45; Laws 2011, LB289, § 35; Laws 2012, LB727, § 22.

Cross References

Compressed Fuel Tax Act, see section 66-697.

International Fuel Tax Agreement Act, see section 66-1401.

66-719 Prohibited acts; financial penalties; department; powers; waiver of interest.

(1) Any person who neglects or refuses to file the report or return due for any period or to pay the tax due for any period within the time prescribed for the filing of such report or return or for the payment of such tax under the motor fuel laws shall automatically accrue a penalty of fifty dollars.

(2) Any person who neglects or refuses to file the report or return due for any period or to pay the tax due for any period within ten days after the time prescribed for the filing of such report or return or the payment of such tax under the motor fuel laws shall, in addition to the penalty in subsection (1) of this section, be subject to the larger of:

- (a) A penalty of one hundred dollars; or
- (b) A penalty of ten percent of the tax not paid.

(3)(a) Notwithstanding anything in subsection (1) or (2) of this section to the contrary, no penalty shall be imposed upon any person who voluntarily reports an underpayment of tax by filing an amended return and paying such tax if such amended return is filed and payment is made within thirty days after the date such tax was due.

(b) Except as provided in subsection (8) of this section, interest shall not be waived on any additional tax due as reported on any amended return, and such interest shall be computed from the date such tax was due.

(4) Any person who neglects or refuses to report and pay motor fuel tax on methanol, naphtha, benzine, benzol, kerosene, or any other volatile, flammable, or combustible liquid that is blended with motor vehicle fuel or undyed diesel fuel shall be subject to a penalty equal to one hundred percent of the tax not paid or one thousand dollars, whichever is larger. Such penalty shall be in addition to the motor fuel tax due and all other penalties provided by law.

(5) If any person knowingly files a false report or return, the penalty shall be equal to one hundred percent of the tax not paid or one thousand dollars, whichever is larger, which penalty shall be in addition to all other penalties provided by law.

(6) Any person who knowingly conducts any activities requiring a license or permit under the motor fuel laws without a license or permit or after a license or permit has been surrendered, suspended, or canceled shall automatically accrue a penalty of one hundred dollars per day for each day such violation continues.

(7) The department may in its discretion waive all or any portion of the penalties incurred upon sufficient showing by the taxpayer that the failure to file or pay is not due to negligence, intentional disregard of the law, rules, or regulations, intentional evasion of the tax, or fraud committed with intent to evade the tax or that such penalties should otherwise be waived.

(8) The department may in its discretion waive any and all interest incurred upon sufficient showing by the taxpayer that such interest should be waived.

(9) All penalties collected by the department under this section shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 1991, LB 627, § 114; Laws 1993, LB 440, § 11; Laws 1996, LB 1121, § 6; Laws 2000, LB 1067, § 27; Laws 2010, LB879, § 4.

66-721 Notices; mailing requirements.

All notices by the department required by the motor fuel laws shall be mailed to the address of the licensee or permitholder as shown on the records of the department.

Source: Laws 1991, LB 627, § 116; Laws 2012, LB727, § 23.

66-722 Returns; review by department; deficiency determination; procedure.

(1) As soon as practical after a return is filed, the department shall examine it to determine the correct amount of tax. If the department finds that the amount of tax shown on the return is less than the correct amount, it shall notify the taxpayer of the amount of the deficiency determined.

(2) If any person fails to file a return or has improperly purchased motor fuel without the payment of tax, the department shall estimate the person's liability from any available information and notify the person of the amount of the deficiency determined.

(3) The amount of the deficiency determined shall constitute a final assessment together with interest and penalties sixty days after the date on which notice was mailed to the taxpayer at his or her last-known address unless a written protest is filed with the department within such sixty-day period.

(4) The final assessment provisions of this section shall constitute a final decision of the agency for purposes of the Administrative Procedure Act.

(5) An assessment made by the department shall be presumed to be correct. In any case when the validity of the assessment is questioned, the burden shall be on the person who challenges the assessment to establish by a preponderance of the evidence that the assessment is erroneous or excessive.

(6)(a) Except in the case of a fraudulent return or of neglect or refusal to make a return, the notice of a proposed deficiency determination shall be mailed within three years after the twentieth day of the month following the end of the period for which the amount proposed is to be determined or within three years after the return is filed, whichever period expires later.

(b) The taxpayer and the department may agree, prior to the expiration of the period in subdivision (a) of this subsection, to extend the period during which the notice of a deficiency determination can be mailed. The extension of the

period for the mailing of a deficiency determination shall also extend the period during which a refund can be claimed.

Source: Laws 1991, LB 627, § 117; Laws 2000, LB 1067, § 28; Laws 2004, LB 983, § 50; Laws 2008, LB914, § 3; Laws 2012, LB727, § 24.

Cross References

Administrative Procedure Act, see section 84-920.

66-737 Repealed. Laws 2012, LB 727, § 58.

66-738 Motor Fuel Tax Enforcement and Collection Division; created within Department of Revenue; powers and duties; funding; contracts authorized.

The Motor Fuel Tax Enforcement and Collection Division is hereby created within the Department of Revenue. The division shall be funded by a separate appropriation program within the department. All provisions of the Compressed Fuel Tax Act, the Petroleum Release Remedial Action Act, the State Aeronautics Department Act, and sections 66-482 to 66-4,149, 66-501 to 66-531, and 66-712 to 66-736, pertaining to the Department of Revenue, the Tax Commissioner, or the division, shall be entirely and separately undertaken and enforced by the division, except that the division may utilize services provided by other programs of the Department of Revenue in functional areas known on July 1, 1991, as the budget subprograms designated revenue operations and administration. Appropriations for the division that are used to fund costs allocated for such functional operations shall be expended by the division in an appropriate pro rata share and shall be subject to audit by the Auditor of Public Accounts, at such time as he or she determines necessary, which audit shall be provided to the budget division of the Department of Administrative Services and the Legislative Fiscal Analyst by October 1 of the year under audit. Audit information useful to other divisions of the Department of Revenue may be shared by the Motor Fuel Tax Enforcement and Collection Division with the other divisions of the department and the Division of Motor Carrier Services of the Department of Motor Vehicles, but audits shall not be considered as a functional operation for purposes of this section. Except for staff performing in functional areas, staff funded from the separate appropriation program shall only be utilized to carry out the provisions of such acts and sections. The auditors and field investigators in the Motor Fuel Tax Enforcement and Collection Division shall be adequately trained for the purposes of motor fuel tax enforcement and collection. The Tax Commissioner shall hire for or assign to the division sufficient staff to carry out the responsibility of the division for the enforcement of the motor fuel laws.

Funds appropriated to the division may also be used to contract with other public agencies or private entities to aid in the issuance of motor fuel delivery permit numbers as provided in subsection (2) of section 66-503, and such contracted funds shall only be used for such purpose. The amount of any contracts entered into pursuant to this section shall be appropriated and accounted for in a separate budget subprogram of the division.

Source: Laws 1991, LB 627, § 141; Laws 1994, LB 1160, § 109; Laws 1996, LB 1121, § 11; Laws 1996, LB 1218, § 21; Laws 1999, LB 143, § 4; Laws 2011, LB289, § 36; Laws 2011, LB337, § 4; Laws 2012, LB727, § 25.

Cross References

Compressed Fuel Tax Act, see section 66-697.

Petroleum Release Remedial Action Act, see section 66-1501.

State Aeronautics Department Act, see section 3-154.

66-739 Motor Fuel Tax Enforcement and Collection Cash Fund; created; use; investment.

There is hereby created the Motor Fuel Tax Enforcement and Collection Cash Fund. Such fund shall consist of appropriations to the fund and money transferred to it pursuant to section 39-2215. The fund shall be used exclusively for the costs of the Motor Fuel Tax Enforcement and Collection Division created by section 66-738 and other related costs for the Department of Agriculture, the Nebraska State Patrol, and functional areas of the Department of Revenue as provided by such section, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Motor Fuel Tax Enforcement and Collection 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 1991, LB 627, § 142; Laws 1994, LB 1066, § 53; Laws 1994, LB 1160, § 110; Laws 2009, First Spec. Sess., LB3, § 40.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 9

SOLAR ENERGY AND WIND ENERGY

Section

- 66-901. Legislative findings.
- 66-902. Definitions; where found.
- 66-902.01. Decommissioning security, defined.
- 66-907. Repealed. Laws 2012, LB 828, § 22.
- 66-909. Solar agreement, defined.
- 66-909.03. Repealed. Laws 2012, LB 828, § 22.
- 66-909.04. Wind agreement, defined.
- 66-910. Solar agreement; wind agreement; manner granted.
- 66-911. Repealed. Laws 2012, LB 828, § 22.
- 66-911.01. Solar agreement; wind agreement; land right or option to secure a land right; requirements.
- 66-912. Solar agreement; wind agreement; how enforced.
- 66-912.01. Solar agreement; wind agreement; initial term; limitation; termination.
- 66-912.02. Interest in wind or solar resource; restriction on severance from surface estate.

66-901 Legislative findings.

The Legislature hereby finds and declares that the use of solar energy and wind energy in Nebraska: (1) Can help reduce the nation's reliance upon irreplaceable domestic and imported fossil fuels; (2) can reduce air and water pollution resulting from the use of conventional energy sources; (3) requires effective legislation and efficient administration of state and local programs to be of greatest value to its citizens; and (4) is of such importance to the public health, safety, and welfare that the state should take appropriate action to encourage its use.

As the use of solar energy and wind energy devices increases, the possibility of future shading and obstruction of such devices by structures or vegetation will also increase. The Legislature therefor declares that the purpose of sections 66-901 to 66-914 is to promote the public health, safety, and welfare by protecting access to solar energy and wind energy as provided in sections 66-901 to 66-914.

Source: Laws 1979, LB 353, § 1; Laws 1997, LB 140, § 1; Laws 2012, LB828, § 1.

66-902 Definitions; where found.

For purposes of sections 66-901 to 66-914, unless the context otherwise requires, the definitions found in sections 66-902.01 to 66-909.04 apply.

Source: Laws 1979, LB 353, § 2; Laws 1997, LB 140, § 2; Laws 2012, LB828, § 2.

66-902.01 Decommissioning security, defined.

Decommissioning security means a security instrument that is posted or given by a wind developer to a municipality or other governmental entity to ensure sufficient funding is available for removal of a wind energy conversion system and reclamation at the end of the useful life of such a system.

Source: Laws 2012, LB828, § 3.

66-907 Repealed. Laws 2012, LB 828, § 22.

66-909 Solar agreement, defined.

Solar agreement shall mean a right, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by any person for the purpose of insuring adequate access of a solar energy system to solar energy.

Source: Laws 1979, LB 353, § 9; Laws 2012, LB828, § 5.

66-909.03 Repealed. Laws 2012, LB 828, § 22.

66-909.04 Wind agreement, defined.

Wind agreement means a right, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, wind easement, wind option, lease, or lease option securing land for the study or production of wind-generated energy or any other instrument executed by or on behalf of any owner of land or air space for the purpose of allowing another party to study the potential for or to develop a wind energy conversion system on such land or in such air space.

Source: Laws 2012, LB828, § 4.

66-910 Solar agreement; wind agreement; manner granted.

Any property owner may grant a solar agreement or wind agreement in the same manner and with the same effect as a conveyance of any other interest in real property.

Source: Laws 1979, LB 353, § 10; Laws 1997, LB 140, § 6; Laws 2012, LB828, § 6.

66-911 Repealed. Laws 2012, LB 828, § 22.**66-911.01 Solar agreement; wind agreement; land right or option to secure a land right; requirements.**

An instrument creating a land right or an option to secure a land right in real property or the vertical space above real property for a solar agreement or a wind agreement shall be created in writing, and the instrument, or an abstract, shall be filed, duly recorded, and indexed in the office of the register of deeds of the county in which the real property subject to the instrument is located. The instrument shall include, but the contents are not limited to:

- (1) The names of the parties;
- (2) A legal description of the real property involved;
- (3) The nature of the interest created;
- (4) The consideration paid for the transfer;
- (5) A description of the improvements the developer intends to make on the real property, including, but not limited to: Roads; transmission lines; substations; wind turbines; and meteorological towers;
- (6) A description of any decommissioning security or local requirements related to decommissioning; and
- (7) The terms or conditions, if any, under which the interest may be revised or terminated.

An abstract under this section need not include the items described in subdivisions (4) through (7) of this section.

Source: Laws 1997, LB 140, § 8; Laws 2009, LB568, § 5; Laws 2012, LB828, § 7.

66-912 Solar agreement; wind agreement; how enforced.

A solar agreement or wind agreement may be enforced by injunction or proceedings in equity or other civil action.

Source: Laws 1979, LB 353, § 12; Laws 1997, LB 140, § 9; Laws 2012, LB828, § 8.

66-912.01 Solar agreement; wind agreement; initial term; limitation; termination.

A solar agreement or wind agreement shall run with the land benefited and burdened and shall terminate upon the conditions stated in the solar agreement or wind agreement. The initial term of a solar agreement or wind agreement shall not exceed forty years, except that the parties to a solar agreement or wind agreement may extend or renew the initial term by mutual written agreement. A wind agreement shall terminate if development of a wind energy conversion system has not commenced within ten years after the effective date of the wind agreement, except that this period may be extended by mutual agreement of the parties to the wind agreement.

Source: Laws 2012, LB828, § 9.

66-912.02 Interest in wind or solar resource; restriction on severance from surface estate.

No interest in any wind or solar resource located on a tract of land and associated with the production or potential production of wind or solar energy on the tract of land may be severed from the surface estate.

Source: Laws 2012, LB828, § 10.

ARTICLE 10 ENERGY CONSERVATION

(b) LOW-INCOME HOME ENERGY CONSERVATION ACT

Section

- 66-1012. Act, how cited.
 66-1014. Terms, defined.
 66-1015. Energy Conservation Improvement Fund; created; investment; department; duties.
 66-1016. Program of eligible energy conservation grants; establishment and administration; certification of improvement; cost share.
 66-1019.01. Act; termination date.

(b) LOW-INCOME HOME ENERGY CONSERVATION ACT

66-1012 Act, how cited.

Sections 66-1012 to 66-1019.01 shall be known and may be cited as the Low-Income Home Energy Conservation Act.

Source: Laws 2008, LB1001, § 1; Laws 2011, LB385, § 1.
 Termination date July 1, 2019.

66-1014 Terms, defined.

For purposes of the Low-Income Home Energy Conservation Act:

- (1) Department means the Department of Revenue;
- (2) Eligible energy conservation grant means a grant paid to an eligible person for an eligible energy conservation improvement;
- (3) Eligible energy conservation improvement means a device, a method, equipment, or material that reduces consumption of or increases efficiency in the use of electricity or natural gas for a residence owned by an eligible person, including, but not limited to, insulation and ventilation, storm or thermal doors or windows, awnings, caulking and weatherstripping, furnace efficiency modifications, thermostat or lighting controls, replacement or modification of lighting fixtures or bulbs to increase the energy efficiency of the home's lighting system, and systems to turn off or vary the delivery of energy;
- (4) Eligible entity means an entity providing funds pursuant to section 66-1015 and which is a public power district organized under Chapter 70, article 6, a rural public power district organized under Chapter 70, article 8, an electric cooperative corporation organized under the Electric Cooperative Corporation Act, a nonprofit corporation organized for the purpose of furnishing electric service, a joint entity organized under the Interlocal Cooperation Act, or a municipality;
- (5) Eligible person means any resident of Nebraska who owns his or her residence and whose household income is at or below one hundred fifty percent of the federal poverty level, as determined in accordance with the Low-Income Home Energy Conservation Act; and

(6) Fiscal year means the state fiscal year which is the period July 1 to the following June 30.

Source: Laws 2008, LB1001, § 3; Laws 2011, LB385, § 2.
Termination date July 1, 2019.

Cross References

Electric Cooperative Corporation Act, see section 70-701.

Interlocal Cooperation Act, see section 13-801.

66-1015 Energy Conservation Improvement Fund; created; investment; department; duties.

(1) The Energy Conservation Improvement Fund is created. There shall be a separate subaccount within the fund for each eligible entity remitting funds and administering a program of eligible energy conservation improvements. The fund shall be administered by the department. Funds shall be remitted by the department to the State Treasurer for deposit in the proper subaccount of the fund from funds remitted by the eligible entity and state matching funds as provided in subsection (2) of this section.

(2)(a) No later than September 1, 2012, and no later than September 1 of each even-numbered year thereafter, any eligible entity planning on administering a program of eligible energy conservation improvements shall notify the department of the amount the entity plans to remit pursuant to subdivision (2)(b) of this section for each of the next two fiscal years.

(b) Commencing July 1, 2014, any eligible entity may remit up to fifty thousand dollars per fiscal year for deposit in the subaccount of the fund for that eligible entity. The amount deposited shall be matched from the amount transferred by the state to the fund as provided in subsection (3) of this section and deposited in the subaccount of the eligible entity. Amounts for deposit shall be accepted on a first-come, first-served basis, and when a total of two hundred fifty thousand dollars of deposits from eligible entities has been received in a fiscal year, no further deposits shall be accepted. Any deposits received from eligible entities after the dollar limit has been reached shall be returned to the eligible entity. Any nonencumbered amount remaining in the fund at the end of the fiscal year shall be transferred to the General Fund.

(3) Commencing July 1, 2014, and each fiscal year thereafter, it is the intent of the Legislature to transfer two hundred fifty thousand dollars from the General Fund to the Energy Conservation Improvement Fund for the purposes of this section.

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

Source: Laws 2008, LB1001, § 4; Laws 2011, LB385, § 3.
Termination date July 1, 2019.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

66-1016 Program of eligible energy conservation grants; establishment and administration; certification of improvement; cost share.

(1) An eligible entity that has remitted funds to the department as provided in section 66-1015 may establish and administer a program of eligible energy conservation grants.

(2) The program shall provide for an eligible energy conservation grant from the Energy Conservation Improvement Fund to an eligible person for installing an eligible energy conservation improvement upon certification by the eligible entity that it has approved an eligible energy conservation improvement for the residence of the eligible person. The eligible entity shall verify the purchase and installation of the eligible energy conservation improvement at the eligible person's residence.

(3) The eligible entity may require the eligible person to pay for a share of the cost of the eligible energy conservation improvement, not to exceed twenty percent of the total cost. The share of the cost to be paid by the eligible person may be recovered by the eligible entity in monthly installments after completion of the eligible energy conservation improvement by adding an amount to the eligible person's electrical bill.

(4) The eligible entity shall certify to the department the amount of money to be distributed from the applicable subaccount of the Energy Conservation Improvement Fund for payments of the energy conservation grants approved in subsection (2) of this section. Requests for distribution may be filed no more frequently than monthly. The department shall distribute money only to the eligible entity.

Source: Laws 2008, LB1001, § 5; Laws 2011, LB385, § 4.
Termination date July 1, 2019.

66-1019.01 Act; termination date.

The Low-Income Home Energy Conservation Act terminates on July 1, 2019.

Source: Laws 2011, LB385, § 5.
Termination date July 1, 2019.

ARTICLE 13

ETHANOL

Section

- 66-1336. Administrator.
- 66-1345. Ethanol Production Incentive Cash Fund; created; use; investment; transfers; duties.
- 66-1345.01. Corn and grain sorghum; excise tax; procedure.
- 66-1345.02. Excise tax; records required; remittance of tax; duties; calculations required by Department of Agriculture; report.
- 66-1345.04. Transfer to Ethanol Production Incentive Cash Fund; legislative intent.

66-1336 Administrator.

The board shall retain the services of a full-time administrator to be appointed by the board. The administrator shall hold office at the pleasure of the board.

Source: Laws 1993, LB 364, § 7; Laws 2012, LB782, § 89; Laws 2013, LB222, § 21.

66-1345 Ethanol Production Incentive Cash Fund; created; use; investment; transfers; duties.

(1) There is hereby created the Ethanol Production Incentive Cash Fund which shall be used by the board to pay the credits created in section 66-1344 to the extent provided in this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The State Treasurer shall transfer to the Ethanol Production Incentive Cash Fund such money as shall be (a) appropriated to the Ethanol Production Incentive Cash Fund by the Legislature, (b) given as gifts, bequests, grants, or other contributions to the Ethanol Production Incentive Cash Fund from public or private sources, (c) made available due to failure to fulfill conditional requirements pursuant to investment agreements entered into prior to April 30, 1992, (d) received as return on investment of the Ethanol Authority and Development Cash Fund, (e) credited to the Ethanol Production Incentive Cash Fund from the excise taxes imposed by section 66-1345.01 through December 31, 2012, and (f) credited to the Ethanol Production Incentive Cash Fund pursuant to sections 66-489, 66-726, 66-1345.04, and 66-1519.

(2) The Department of Revenue shall, at the end of each calendar month, notify the State Treasurer of the amount of motor fuel tax that was not collected in the preceding calendar month due to the credits provided in section 66-1344. The State Treasurer shall transfer from the Ethanol Production Incentive Cash Fund to the Highway Trust Fund an amount equal to such credits less the following amounts:

(a) For 1993, 1994, and 1995, the amount generated during the calendar quarter by a one-cent tax on motor fuel pursuant to sections 66-489 and 66-6,107;

(b) For 1996, the amount generated during the calendar quarter by a three-quarters-cent tax on motor fuel pursuant to such sections;

(c) For 1997, the amount generated during the calendar quarter by a one-half-cent tax on motor fuel pursuant to such sections; and

(d) For 1998 and each year thereafter, no reduction.

For 1993 through 1997, if the amount generated pursuant to subdivisions (a), (b), and (c) of this subsection and the amount transferred pursuant to subsection (1) of this section are not sufficient to fund the credits provided in section 66-1344, then the credits shall be funded through the Ethanol Production Incentive Cash Fund but shall not be funded through either the Highway Cash Fund or the Highway Trust Fund. For 1998 and each year thereafter, the credits provided in such section shall be funded through the Ethanol Production Incentive Cash Fund but shall not be funded through either the Highway Cash Fund or the Highway Trust Fund.

If, during any month, the amount of money in the Ethanol Production Incentive Cash Fund is not sufficient to reimburse the Highway Trust Fund for credits earned pursuant to section 66-1344, the Department of Revenue shall suspend the transfer of credits by ethanol producers until such time as additional funds are available in the Ethanol Production Incentive Cash Fund for transfer to the Highway Trust Fund. Thereafter, the Department of Revenue shall, at the end of each month, allow transfer of accumulated credits earned by each ethanol producer on a prorated basis derived by dividing the amount in the fund by the aggregate amount of accumulated credits earned by all ethanol producers.

(3) The State Treasurer shall transfer from the Ethanol Production Incentive Cash Fund to the Management Services Expense Revolving Fund the amount reported under subsection (4) of section 66-1345.02 for each calendar month of the fiscal year as provided in such subsection.

(4) On December 31, 2012, the State Treasurer shall transfer one-half of the unexpended and unobligated funds, including all subsequent investment interest, from the Ethanol Production Incentive Cash Fund to the Nebraska Corn Development, Utilization, and Marketing Fund and the Grain Sorghum Development, Utilization, and Marketing Fund in the same proportion as funds were collected pursuant to section 66-1345.01 from corn and grain sorghum. The Department of Agriculture shall assist the State Treasurer in determining the amounts to be transferred to the funds. The State Treasurer shall transfer the remaining one-half of the unexpended and unobligated funds to the General Fund.

(5) Whenever the unobligated balance in the Ethanol Production Incentive Cash Fund exceeds twenty million dollars, the Department of Revenue shall notify the Department of Agriculture at which time the Department of Agriculture shall suspend collection of the excise tax levied pursuant to section 66-1345.01. If, after suspension of the collection of such excise tax, the balance of the fund falls below ten million dollars, the Department of Revenue shall notify the Department of Agriculture which shall resume collection of the excise tax.

(6) On or before December 1, 2003, and each December 1 thereafter, the Department of Revenue and the Nebraska Ethanol Board shall jointly submit a report electronically to the Legislature which shall project the anticipated revenue and expenditures from the Ethanol Production Incentive Cash Fund through the termination of the ethanol production incentive programs pursuant to section 66-1344. The initial report shall include a projection of the amount of ethanol production for which the Department of Revenue has entered agreements to provide ethanol production credits pursuant to section 66-1344.01 and any additional ethanol production which the Department of Revenue and the Nebraska Ethanol Board reasonably anticipate may qualify for credits pursuant to section 66-1344.

Source: Laws 1992, LB 754, § 9; R.S.Supp., 1992, § 66-1327; Laws 1993, LB 364, § 16; Laws 1994, LB 961, § 2; Laws 1994, LB 1066, § 55; Laws 1994, LB 1160, § 114; Laws 1995, LB 182, § 62; Laws 1995, LB 377, § 8; Laws 1999, LB 605, § 2; Laws 2001, LB 329, § 13; Laws 2001, LB 536, § 3; Laws 2004, LB 479, § 7; Laws 2004, LB 983, § 59; Laws 2004, LB 1065, § 7; Laws 2007, LB322, § 13; Laws 2007, LB701, § 27; Laws 2010, LB689, § 2; Laws 2011, LB379, § 1; Laws 2012, LB782, § 90; Laws 2014, LB130, § 1.

Effective date July 18, 2014.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

66-1345.01 Corn and grain sorghum; excise tax; procedure.

An excise tax is levied upon all corn and grain sorghum sold through commercial channels in Nebraska or delivered in Nebraska. For any sale or

delivery of corn or grain sorghum occurring on or after July 1, 1995, and before January 1, 2000, the tax is three-fourths cent per bushel for corn and three-fourths cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after January 1, 2000, and before January 1, 2001, the tax is one-half cent per bushel for corn and one-half cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after October 1, 2001, and before October 1, 2004, the tax is one-half cent per bushel for corn and one-half cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after October 1, 2004, and before October 1, 2005, the tax is three-fourths cent per bushel for corn and three-fourths cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after October 1, 2005, and before October 1, 2012, the tax is seven-eighths cent per bushel for corn and seven-eighths cent per hundredweight for grain sorghum. The tax shall be in addition to any fee imposed pursuant to sections 2-3623 and 2-4012.

The excise tax shall be imposed at the time of sale or delivery and shall be collected by the first purchaser. The tax shall be collected, administered, and enforced in conjunction with the fees imposed pursuant to sections 2-3623 and 2-4012. The tax shall be collected, administered, and enforced by the Department of Agriculture. No corn or grain sorghum shall be subject to the tax imposed by this section more than once.

In the case of a pledge or mortgage of corn or grain sorghum as security for a loan under the federal price support program, the excise tax shall be deducted from the proceeds of such loan at the time the loan is made. If, within the life of the loan plus thirty days after the collection of the excise tax for corn or grain sorghum that is mortgaged as security for a loan under the federal price support program, the grower of the corn or grain sorghum so mortgaged decides to purchase the corn or grain sorghum and use it as feed, the grower shall be entitled to a refund of the excise tax previously paid. The refund shall be payable by the department upon the grower's written application for a refund. The application shall have attached proof of the tax deducted.

The excise tax shall be deducted whether the corn or grain sorghum is stored in this or any other state. The excise tax shall not apply to the sale of corn or grain sorghum to the federal government for ultimate use or consumption by the people of the United States when the State of Nebraska is prohibited from imposing such tax by the Constitution of the United States and laws enacted pursuant thereto.

Source: Laws 1995, LB 377, § 2; Laws 1996, LB 1336, § 7; Laws 1999, LB 605, § 3; Laws 2001, LB 536, § 4; Laws 2004, LB 479, § 8; Laws 2004, LB 1065, § 8; Laws 2005, LB 90, § 18; Laws 2007, LB322, § 14; Laws 2007, LB701, § 28; Laws 2010, LB689, § 3.

66-1345.02 Excise tax; records required; remittance of tax; duties; calculations required by Department of Agriculture; report.

(1) The first purchaser, at the time of sale or delivery, shall retain the excise tax as provided in section 66-1345.01 and shall maintain the necessary records of the excise tax for each sale or delivery of corn or grain sorghum. Records maintained by the first purchaser shall provide (a) the name and address of the seller or deliverer, (b) the date of the sale or delivery, (c) the number of bushels

of corn or hundredweight of grain sorghum sold or delivered, and (d) the amount of excise tax retained on each sale or delivery. The records shall be open for inspection and audit by authorized representatives of the Department of Agriculture during normal business hours observed by the first purchaser.

(2) The first purchaser shall render and have on file with the department by the last day of each January, April, July, and October on forms prescribed by the department a statement of the number of bushels of corn and hundredweight of grain sorghum sold or delivered in Nebraska. At the time the statement is filed, the first purchaser shall pay and remit to the department the excise tax.

(3) The department shall remit the excise tax collected to the State Treasurer for credit to the Ethanol Production Incentive Cash Fund within thirty days after the end of each quarter.

(4) The department shall calculate its costs in collecting and enforcing the excise tax imposed by section 66-1345.01 and shall report such costs to the budget division of the Department of Administrative Services within thirty days after the end of the fiscal year. Sufficient funds to cover such costs shall be transferred from the Ethanol Production Incentive Cash Fund to the Management Services Expense Revolving Fund at the end of each calendar month.

Source: Laws 1995, LB 377, § 3; Laws 1999, LB 605, § 4; Laws 2001, LB 536, § 5; Laws 2007, LB322, § 15; Laws 2007, LB701, § 29; Laws 2010, LB689, § 4.

66-1345.04 Transfer to Ethanol Production Incentive Cash Fund; legislative intent.

(1) The State Treasurer shall transfer from the General Fund to the Ethanol Production Incentive Cash Fund, on or before the end of each of fiscal years 1995-96 and 1996-97, \$8,000,000 per fiscal year.

(2) It is the intent of the Legislature that the following General Fund amounts be appropriated to the Ethanol Production Incentive Cash Fund in each of the following years:

(a) For each of fiscal years 1997-98 and 1998-99, \$7,000,000 per fiscal year;

(b) For fiscal year 1999-2000, \$6,000,000;

(c) For fiscal year 2000-01, \$5,000,000;

(d) For fiscal year 2001-02 and for each of fiscal years 2003-04 through 2006-07, \$1,500,000;

(e) For each of fiscal years 2005-06 and 2006-07, \$2,500,000 in addition to the amount in subdivision (2)(d) of this section;

(f) For fiscal year 2007-08, \$5,500,000;

(g) For each of fiscal years 2008-09 through 2011-12, \$2,500,000;

(h) For each of fiscal years 2005-06 and 2006-07, \$5,000,000 in addition to the other amounts in this section;

(i) For fiscal year 2007-08, \$15,500,000 in addition to the other amounts in this section;

(j) For fiscal year 2009-10, \$8,250,000 in addition to the other amounts in this section;

(k) For fiscal year 2010-11, \$3,000,000 in addition to the other amounts in this section; and

(l) For fiscal years 2011-12 and 2012-13, amounts totaling up to \$1,000,000 in addition to the other amounts in this section.

Source: Laws 1995, LB 377, § 4; Laws 1999, LB 605, § 5; Laws 2001, LB 536, § 6; Laws 2002, Second Spec. Sess., LB 1, § 3; Laws 2005, LB 90, § 19; Laws 2006, LB 968, § 1; Laws 2007, LB322, § 16; Laws 2009, LB316, § 17; Laws 2011, LB378, § 24; Laws 2012, LB969, § 7.

ARTICLE 14

INTERNATIONAL FUEL TAX AGREEMENT ACT

Section

66-1405. Tax rate; how determined; setoff authorized.
 66-1406.02. License; director; powers.
 66-1418. Trip permits; issuance; fees.

66-1405 Tax rate; how determined; setoff authorized.

The amount of the tax imposed and collected on behalf of this state under an agreement shall be determined as provided in the Compressed Fuel Tax Act and sections 66-482 to 66-4,149. The Department of Revenue in administering the Compressed Fuel Tax Act and sections 66-482 to 66-4,149 shall provide information and assistance to the director regarding the amount of tax imposed and collected from time to time as may be necessary. The amount of tax due under an agreement may be collected by setoff against any state income tax refund due to the taxpayer pursuant to sections 77-27,210 to 77-27,221.

Source: Laws 1988, LB 836, § 5; Laws 1996, LB 1218, § 26; Laws 1997, LB 720, § 20; Laws 2011, LB289, § 37.

Cross References

Compressed Fuel Tax Act, see section 66-697.

66-1406.02 License; director; powers.

(1) The director may suspend, revoke, cancel, or refuse to issue or renew a license under the International Fuel Tax Agreement Act:

(a) If the applicant's or licensee's registration certificate issued pursuant to the International Registration Plan Act has been suspended, revoked, or canceled or the director refused to issue or renew such certificate;

(b) If the applicant or licensee is in violation of sections 75-392 to 75-399;

(c) If the applicant's or licensee's security has been canceled;

(d) If the applicant or licensee failed to provide additional security as required;

(e) If the applicant or licensee failed to file any report or return required by the motor fuel laws, filed an incomplete report or return required by the motor fuel laws, did not file any report or return required by the motor fuel laws electronically, or did not file a report or return required by the motor fuel laws on time;

(f) If the applicant or licensee failed to pay taxes required by the motor fuel laws due within the time provided;

(g) If the applicant or licensee filed any false report, return, statement, or affidavit, required by the motor fuel laws, knowing it to be false;

(h) If the applicant or licensee would no longer be eligible to obtain a license; or

(i) If the applicant or licensee committed any other violation of the International Fuel Tax Agreement Act or the rules and regulations adopted and promulgated under the act.

(2) Prior to taking any action pursuant to subsection (1) of this section, the director shall notify and advise the applicant or licensee of the proposed action and the reasons for such action in writing, by regular United States mail, to his or her last-known business address as shown on the application or license. The notice shall also include an advisement of the procedures in subsection (3) of this section.

(3) The applicant or licensee may, within thirty days after the mailing of the notice, petition the director in writing for a hearing to contest the proposed action. The hearing shall be commenced in accordance with the rules and regulations adopted and promulgated by the Department of Motor Vehicles. If a petition is filed, the director shall, within twenty days after receipt of the petition, set a hearing date at which the applicant or licensee may show cause why the proposed action should not be taken. The director shall give the applicant or licensee reasonable notice of the time and place of the hearing. If the director's decision is adverse to the applicant or licensee, the applicant or licensee may appeal the decision in accordance with the Administrative Procedure Act.

(4) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, the filing of the petition shall stay any action by the director until a hearing is held and a final decision and order is issued.

(5) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, if no petition is filed at the expiration of thirty days after the date on which the notification was mailed, the director may take the proposed action described in the notice.

(6) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, if, in the judgment of the director, the applicant or licensee has complied with or is no longer in violation of the provisions for which the director took action under this section, the director may reinstate the license without delay. An applicant for reinstatement, issuance, or renewal of a license within three years after the date of suspension, revocation, cancellation, or refusal to issue or renew shall submit a fee of one hundred dollars to the director. The director shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.

(7) Suspension of, revocation of, cancellation of, or refusal to issue or renew a license by the director shall not relieve any person from making or filing the reports or returns required by the motor fuel laws in the manner or within the time required.

(8) Any person who receives notice from the director of action taken pursuant to subsection (1) of this section shall, within three business days, return such registration certificate and license plates issued pursuant to section 60-3,198 to the department. If any person fails to return the registration certificate and

license plates to the department, the department shall notify the Nebraska State Patrol that any such person is in violation of this section.

Source: Laws 1998, LB 1056, § 5; Laws 2003, LB 563, § 38; Laws 2006, LB 853, § 22; Laws 2007, LB358, § 11; Laws 2009, LB331, § 13; Laws 2012, LB751, § 47.

Cross References

Administrative Procedure Act, see section 84-920.

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

66-1418 Trip permits; issuance; fees.

(1) This subsection applies until the implementation date designated by the director pursuant to subsection (2) of this section. The department shall provide for a trip permit to be issued. Such trip permits shall be issued for a fee of twenty dollars and shall be valid for a period of seventy-two hours. The carrier enforcement division designated under section 60-1303 shall act as an agent for the department in collecting the fees prescribed in this section and shall remit all such fees collected to the State Treasurer for credit to the Highway Cash Fund. Such trip permits shall be available at weighing stations operated by the carrier enforcement division and at various vendor stations as determined appropriate by the carrier enforcement division. Trip permits shall be obtained at the first available location, whether that is a weighing station or a vendor station. The vendor stations shall be entitled to collect and retain an additional fee of ten percent of the fee collected pursuant to this section as reimbursement for the clerical work of issuing the permits.

(2) This subsection applies beginning on an implementation date designated by the director. The director shall designate an implementation date which is on or before January 1, 2015. A trip permit shall be issued before any person required to obtain a trip permit enters this state. The trip permit shall be issued by the director through Internet sales from the department’s web site. The trip permit shall be issued for a fee of twenty dollars and shall be valid for a period of seventy-two hours. The fee collected by the director shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

Source: Laws 2004, LB 983, § 63; Laws 2013, LB250, § 2.

ARTICLE 15

PETROLEUM RELEASE REMEDIAL ACTION

Section

- 66-1501. Act, how cited.
- 66-1519. Petroleum Release Remedial Action Cash Fund; created; use; investment.
- 66-1521. Petroleum release remedial action fee; amount; license required; filing; violation; penalty; Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue; powers and duties; Petroleum Release Remedial Action Collection Fund; created; use; investment.
- 66-1523. Reimbursement; amount; limitations; Prompt Payment Act applicable.
- 66-1525. Reimbursement; application; procedure; State Fire Marshal; duties; reduction of reimbursement; notification required.
- 66-1529.02. Remedial actions by department; third-party claims; recovery of expenses.
- 66-1532. Repealed. Laws 2010, LB 832, § 3.

66-1501 Act, how cited.

Sections 66-1501 to 66-1531 shall be known and may be cited as the Petroleum Release Remedial Action Act.

Source: Laws 1989, LB 289, § 1; Laws 1991, LB 409, § 1; Laws 1994, LB 1160, § 116; Laws 1996, LB 1226, § 1; Laws 1998, LB 1161, § 26; Laws 2004, LB 962, § 103; Laws 2010, LB832, § 1.

66-1519 Petroleum Release Remedial Action Cash Fund; created; use; investment.

(1) There is hereby created the Petroleum Release Remedial Action Cash Fund to be administered by the department. Revenue from the following sources shall be remitted to the State Treasurer for credit to the fund:

(a) The fees imposed by sections 66-1520 and 66-1521;

(b) Money paid under an agreement, stipulation, cost-recovery award under section 66-1529.02, or settlement; and

(c) Money received by the department in the form of gifts, grants, reimbursements, property liquidations, or appropriations from any source intended to be used for the purposes of the fund.

(2) Money in the fund may be spent for: (a) Reimbursement for the costs of remedial action by a responsible person or his or her designated representative and costs of remedial action undertaken by the department in response to a release first reported after July 17, 1983, and on or before June 30, 2016, including reimbursement for damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred; (b) payment of any amount due from a third-party claim; (c) fee collection expenses incurred by the State Fire Marshal; (d) direct expenses incurred by the department in carrying out the Petroleum Release Remedial Action Act; (e) other costs related to fixtures and tangible personal property as provided in section 66-1529.01; (f) interest payments as allowed by section 66-1524; (g) claims approved by the State Claims Board authorized under section 66-1531; and (h) the direct and indirect costs incurred by the department in responding to spills and other environmental emergencies related to petroleum or petroleum products.

(3) Transfers may be made from the Petroleum Release Remedial Action Cash Fund to the General Fund at the direction of the Legislature. The State Treasurer shall transfer one million five hundred thousand dollars from the Petroleum Release Remedial Action Cash Fund to the Ethanol Production Incentive Cash Fund on July 1 of each of the following years: 2004 through 2011.

(4) Any money in the Petroleum Release Remedial Action Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1989, LB 289, § 19; Laws 1991, LB 409, § 12; Laws 1993, LB 237, § 1; Laws 1994, LB 1066, § 57; Laws 1996, LB 1226, § 7; Laws 1998, LB 1161, § 28; Laws 1999, LB 270, § 2; Laws 2001, LB 461, § 3; Laws 2002, LB 1003, § 41; Laws 2002, LB 1310, § 7; Laws 2003, LB 367, § 2; Laws 2004, LB 962, § 105;

Laws 2004, LB 1065, § 9; Laws 2005, LB 40, § 4; Laws 2008, LB1145, § 1; Laws 2009, LB154, § 15; Laws 2011, LB2, § 6; Laws 2011, LB29, § 2; Laws 2012, LB873, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

66-1521 Petroleum release remedial action fee; amount; license required; filing; violation; penalty; Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue; powers and duties; Petroleum Release Remedial Action Collection Fund; created; use; investment.

(1) A petroleum release remedial action fee is hereby imposed upon the producer, refiner, importer, distributor, wholesaler, or supplier who engages in the sale, distribution, delivery, and use of petroleum within this state, except that the fee shall not be imposed on petroleum that is exported. The fee shall also be imposed on diesel fuel which is indelibly dyed. The amount of the fee shall be nine-tenths of one cent per gallon on motor vehicle fuel as defined in section 66-482 and three-tenths of one cent per gallon on diesel fuel as defined in section 66-482. The amount of the fee shall be used first for payment of claims approved by the State Claims Board pursuant to section 66-1531; second, up to three million dollars of the fee per year shall be used for reimbursement of owners and operators under the Petroleum Release Remedial Action Act for investigations of releases ordered pursuant to section 81-15,124; and third, the remainder of the fee shall be used for any other purpose authorized by section 66-1519. The fee shall be paid by all producers, refiners, importers, distributors, wholesalers, and suppliers subject to the fee by filing a monthly return on or before the twentieth day of the calendar month following the monthly period to which it relates. The pertinent provisions, specifically including penalty provisions, of the motor fuel laws as defined in section 66-712 shall apply to the administration and collection of the fee except for the treatment given refunds. There shall be a refund allowed on any fee paid on petroleum which was taxed and then exported, destroyed, or purchased for use by the United States Government or its agencies. The department may also adjust for all errors in the payment of the fee. In each calendar year, no claim for refund related to the fee can be for an amount less than ten dollars.

(2) No producer, refiner, importer, distributor, wholesaler, or supplier shall engage in the sale, distribution, delivery, or use of petroleum in this state without having first obtained a petroleum release remedial action license. Application for a license shall be made to the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue upon a form prepared and furnished by the division. If the applicant is an individual, the application shall include the applicant's social security number. Failure to obtain a license prior to engaging in the sale, distribution, delivery, or use of petroleum shall be a Class IV misdemeanor. The division may suspend or cancel the license of any producer, refiner, importer, distributor, wholesaler, or supplier who fails to pay the fee imposed by subsection (1) of this section in the same manner as licenses are suspended or canceled pursuant to section 66-720.

(3) The division may adopt and promulgate rules and regulations necessary to carry out this section.

(4) The division shall deduct and withhold from the petroleum release remedial action fee collected pursuant to this section an amount sufficient to reimburse the direct costs of collecting and administering the petroleum release remedial action fee. Such costs shall not exceed one hundred fifty thousand dollars for each fiscal year. The one hundred fifty thousand dollars shall be prorated, based on the number of months the fee is collected, whenever the fee is collected for only a portion of a year. The amount deducted and withheld for costs shall be deposited in the Petroleum Release Remedial Action Collection Fund which is hereby created. The Petroleum Release Remedial Action Collection Fund shall be appropriated to the Department of Revenue, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Petroleum Release Remedial Action Collection Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(5) The division shall collect the fee imposed by subsection (1) of this section.

Source: Laws 1989, LB 289, § 21; Laws 1991, LB 409, § 14; Laws 1991, LB 627, § 139; Laws 1994, LB 1066, § 58; Laws 1994, LB 1160, § 120; Laws 1997, LB 752, § 153; Laws 1998, LB 1161, § 31; Laws 2000, LB 1067, § 31; Laws 2004, LB 983, § 66; Laws 2009, LB165, § 1; Laws 2009, First Spec. Sess., LB3, § 41; Laws 2012, LB727, § 26.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

66-1523 Reimbursement; amount; limitations; Prompt Payment Act applicable.

(1) Except as provided in subsection (2) of this section, the department shall provide reimbursement from the fund in accordance with section 66-1525 to eligible responsible persons for the cost of remedial action for releases reported after July 17, 1983, and on or before June 30, 2016, and for the cost of paying third-party claims. The reimbursement for the cost of remedial action shall not exceed nine hundred seventy-five thousand dollars per occurrence. The total of the claims paid under section 66-1531 and the reimbursement for third-party claims shall not exceed one million dollars per occurrence. The responsible person shall pay the first ten thousand dollars of the cost of the remedial action or third-party claim, twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed fifteen thousand dollars, and the amount of any reduction authorized under subsection (5) of section 66-1525. If the department determines that a responsible person was ordered to take remedial action for a release which was later found to be from a tank not owned or operated by such person, (a) such person shall be fully reimbursed and shall not be required to pay the first cost or percent of the remaining cost as provided in this subsection and (b) the first cost and percent of the remaining cost not required to be paid by the person ordered to take remedial action shall be paid to the fund as a cost of remedial action by the owner or operator of the tank found to be the cause of the release. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred seventy-five thousand dollars per responsible person. Reimbursement of a cost incurred as a result of a suspension ordered by the

department shall not be limited by this subsection if the suspension was caused by insufficiency in the fund to provide reimbursement.

(2) Upon the determination by the department that the responsible person sold no less than two thousand gallons of petroleum and no more than two hundred fifty thousand gallons of petroleum during the calendar year immediately preceding the first report of the release or stored less than ten thousand gallons of petroleum in the calendar year immediately preceding the first report of the release, the department shall provide reimbursement from the fund in accordance with section 66-1525 to such an eligible person for the cost of remedial action for releases reported after July 17, 1983, and on or before June 30, 2016, and for the cost of paying third-party claims. The reimbursement for the cost of remedial action shall not exceed nine hundred eighty-five thousand dollars per occurrence. The total of the claims paid under section 66-1531 and the reimbursement for third-party claims shall not exceed one million dollars per occurrence. The responsible person shall pay the first five thousand dollars of the cost of the remedial action or third-party claim, twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed ten thousand dollars, and the amount of any reduction authorized under subsection (5) of section 66-1525. If the department determines that a responsible person was ordered to take remedial action for a release which was later found to be from a tank not owned or operated by such person, (a) such person shall be fully reimbursed and shall not be required to pay the first cost or percent of the remaining cost as provided in this subsection and (b) the first cost and percent of the remaining cost not required to be paid by the person ordered to take remedial action shall be paid to the fund as a cost of remedial action by the owner or operator of the tank found to be the cause of the release. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred eighty-five thousand dollars per responsible person. Reimbursement of a cost incurred as a result of a suspension ordered by the department shall not be limited by this subsection if the suspension was caused by insufficiency in the fund to provide reimbursement.

(3) The department may make partial reimbursement during the time that remedial action is being taken if the department is satisfied that the remedial action being taken is as required by the department.

(4) If the fund is insufficient for any reason to reimburse the amount set forth in this section, the maximum amount that the fund shall be required to reimburse is the amount in the fund. If reimbursements approved by the department exceed the amount in the fund, reimbursements with interest shall be made when the fund is sufficiently replenished in the order in which the applications for them were received by the department, except that an application pending before the department on January 1, 1996, submitted by a local government as defined in section 13-2202 shall, after July 1, 1996, be reimbursed first when funds are available. This exception applies only to local government applications pending on and not submitted after January 1, 1996.

(5) Applications for reimbursement properly made before, on, or after April 16, 1996, shall be considered bills for goods or services provided for third parties for purposes of the Prompt Payment Act.

(6) Notwithstanding any other provision of law, there shall be no reimbursement from the fund for the cost of remedial action or for the cost of paying third-party claims for any releases reported on or after July 1, 2016.

(7) For purposes of this section, occurrence shall mean an accident, including continuous or repeated exposure to conditions, which results in a release from a tank.

Source: Laws 1989, LB 289, § 23; Laws 1991, LB 409, § 16; Laws 1993, LB 237, § 2; Laws 1996, LB 1226, § 9; Laws 1998, LB 1161, § 32; Laws 1999, LB 270, § 3; Laws 2001, LB 461, § 4; Laws 2004, LB 962, § 106; Laws 2008, LB1145, § 2; Laws 2012, LB873, § 2.

Cross References

Prompt Payment Act, see section 81-2401.

66-1525 Reimbursement; application; procedure; State Fire Marshal; duties; reduction of reimbursement; notification required.

(1) Any responsible person or his or her designated representative who has taken remedial action in response to a release first reported after July 17, 1983, and on or before June 30, 2016, or against whom there is a third-party claim may apply to the department under the rules and regulations adopted and promulgated pursuant to section 66-1518 for reimbursement for the costs of the remedial action or third-party claim. Partial payment of such reimbursement to the responsible person may be authorized by the department at the approved stages prior to the completion of remedial action when a remedial action plan has been approved. If any stage is projected to take more than ninety days to complete partial payments may be requested every sixty days. Such partial payment may include the eligible and reasonable costs of such plan or pilot projects conducted during the remedial action.

(2) No reimbursement may be made unless the department makes the following eligibility determinations:

(a) The tank was in substantial compliance with any rules and regulations of the United States Environmental Protection Agency, the State Fire Marshal, and the department which were applicable to the tank. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the rules and regulations may have had on the tank thereby causing or contributing to the release and the extent of the remedial action thereby required;

(b) Either the State Fire Marshal or the department was given notice of the release in substantial compliance with the rules and regulations adopted and promulgated pursuant to the Environmental Protection Act and the Petroleum Products and Hazardous Substances Storage and Handling Act. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the notice provisions of the rules and regulations may have had on the remedial action being taken in a prompt, effective, and efficient manner;

(c) The responsible person reasonably cooperated with the department and the State Fire Marshal in responding to the release;

(d) The department has approved the plan submitted by the responsible person for the remedial action in accordance with rules and regulations adopted and promulgated by the department pursuant to the Environmental

Protection Act or the Petroleum Products and Hazardous Substances Storage and Handling Act or that portion of the plan for which payment or reimbursement is requested. However, responsible persons may undertake remedial action prior to approval of a plan by the department or during the time that remedial action at a site was suspended at any time after April 1995 because the fund was insufficient to pay reimbursements and be eligible for reimbursement at a later time if the responsible person complies with procedures provided to the responsible party by the department or set out in rules and regulations adopted and promulgated by the Environmental Quality Council;

(e) The costs for the remedial action were actually incurred by the responsible person or his or her designated representative after May 27, 1989, and were eligible and reasonable;

(f) If reimbursement for a third-party claim is involved, the cause of action for the third-party claim accrued after April 26, 1991, and the Attorney General was notified by any person of the service of summons for the action within ten days of such service; and

(g) The responsible person or his or her designated representative has paid the amount specified in subsection (1) or (2) of section 66-1523.

(3) The State Fire Marshal shall review each application prior to consideration by the department and provide to the department any information the State Fire Marshal deems relevant to subdivisions (2)(a) through (g) of this section. The State Fire Marshal shall issue a determination with respect to an applicant's compliance with rules and regulations adopted and promulgated by the State Fire Marshal. The State Fire Marshal shall issue a compliance determination to the department within thirty days after receiving an application from the department.

(4) The department may withhold taking action on an application during the pendency of an enforcement action by the state or federal government related to the tank or a release from the tank.

(5) Reimbursements made for a remedial action may be reduced as much as one hundred percent for failure by the responsible person to comply with applicable statutory or regulatory requirements. In determining the amount of the reimbursement reduction, the department shall consider:

- (a) The extent of and reasons for noncompliance;
- (b) The likely environmental impact of the noncompliance; and
- (c) Whether noncompliance was negligent, knowing, or willful.

(6) Except as provided in subsection (4) of this section, the department shall notify the responsible person of its approval or denial of the remedial action plan within one hundred twenty days after receipt of a remedial action plan which contains all the required information. If after one hundred twenty days the department fails to either deny, approve, or amend the remedial action plan submitted, the proposed plan shall be deemed approved. If the remedial action plan is denied, the department shall provide the reasons for such denial.

Source: Laws 1989, LB 289, § 25; Laws 1991, LB 409, § 17; Laws 1993, LB 237, § 3; Laws 1994, LB 1349, § 10; Laws 1996, LB 1226, § 11; Laws 1998, LB 1161, § 33; Laws 1999, LB 270, § 4; Laws 2001, LB 461, § 5; Laws 2004, LB 962, § 107; Laws 2008, LB1145, § 3; Laws 2012, LB873, § 3.

Cross References

Environmental Protection Act, see section 81-1532.

Petroleum Products and Hazardous Substances Storage and Handling Act, see section 81-15,117.

66-1529.02 Remedial actions by department; third-party claims; recovery of expenses.

(1) The department may undertake remedial actions in response to a release first reported after July 17, 1983, and on or before June 30, 2016, with money available in the fund if:

- (a) The responsible person cannot be identified or located;
- (b) An identified responsible person cannot or will not comply with the remedial action requirements; or
- (c) Immediate remedial action is necessary, as determined by the Director of Environmental Quality, to protect human health or the environment.

(2) The department may pay the costs of a third-party claim meeting the requirements of subdivision (2)(f) of section 66-1525 with money available in the fund if the responsible person cannot or will not pay the third-party claim.

(3) Reimbursement for any damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred shall be considered as part of the cost of remedial action involving the site where the release or suspected release occurred. The costs shall be reimbursed from money available in the fund. If such reimbursement is deemed inadequate by the party claiming the damages, the party's claim for damages caused by the department shall be filed as provided in section 76-705.

(4) All expenses paid from the fund under this section, court costs, and attorney's fees may be recovered in a civil action in the district court of Lancaster County. The action may be brought by the county attorney or Attorney General at the request of the director against the responsible person. All recovered expenses shall be deposited into the fund.

Source: Laws 1991, LB 409, § 19; Laws 1993, LB 3, § 41; Laws 1993, LB 237, § 4; Laws 1998, LB 1161, § 35; Laws 1999, LB 270, § 5; Laws 2001, LB 461, § 6; Laws 2004, LB 962, § 108; Laws 2008, LB1145, § 4; Laws 2012, LB873, § 4.

66-1532 Repealed. Laws 2010, LB 832, § 3.

ARTICLE 18

STATE NATURAL GAS REGULATION ACT

Section

- 66-1801. Act, how cited.
- 66-1808. Rate changes; term or condition of service; when effective.
- 66-1831. Public advocate; powers.
- 66-1839. Municipal Rate Negotiations Revolving Loan Fund; created; use; administration; audit; investment; loan repayment.
- 66-1868. Rural infrastructure development; rural infrastructure surcharge tariff; filing in additional filings; agreement; contents; gas supply cost adjustment tariff; collection; refund; billing.

66-1801 Act, how cited.

Sections 66-1801 to 66-1868 shall be known and may be cited as the State Natural Gas Regulation Act.

Source: Laws 2003, LB 790, § 1; Laws 2006, LB 1249, § 2; Laws 2009, LB658, § 1; Laws 2012, LB1115, § 9.

66-1808 Rate changes; term or condition of service; when effective.

(1) The provisions of this section do not apply to general rate filings.

(2) Unless the commission otherwise orders, no jurisdictional utility shall make effective any changed rate or any term or condition of service pertaining to the service or rates of such utility, except by filing the same with the commission at least thirty days prior to the proposed effective date. The commission, for good cause, may allow such changed rate or any term or condition of service pertaining to the service or rates of any such utility, to become effective on less than thirty days' notice. If the commission allows a change to become effective on less than thirty days' notice, the effective date of the allowed change shall be the date established in the commission order approving such change or the date of the order if no effective date is otherwise established. Any such proposed change shall be shown by filing with the commission a schedule showing the changes, and such changes shall be plainly indicated by proper reference marks in amendments or supplements to existing tariffs, schedules, or classifications, or in new issues thereof.

(3) Whenever any jurisdictional utility files with the commission the changes desired to be made and put in force by such utility, the commission, either upon complaint or upon its own motion, may give notice and hold a hearing upon such proposed changes. Pending such hearing, the commission may suspend the operation of such change and defer the effective date of such change in rate or any term or condition of service pertaining to the service or rates of any such utility, by delivering to such utility a statement in writing of its reasons for such suspension. The commission may not suspend a tariff filed pursuant to section 66-1868.

(4) The commission shall not delay the effective date of the proposed change in rate or any term or condition of service pertaining to the service or rates of any such jurisdictional utility, more than one hundred eighty days beyond the date the utility filed its application requesting the proposed change. If the commission does not suspend the proposed change within thirty days after the date the same is filed by the utility, such proposed change shall be deemed approved by the commission and shall take effect on the proposed effective date. If the commission has not issued a final order on the proposed change in any rate or any term or condition of service pertaining to the service or rates of any such utility, within one hundred eighty days after the date the utility files its application requesting the proposed change, then the proposed change shall be deemed approved by the commission and the proposed change shall be effective immediately, except that (a) in any proceeding initiated as a result of a filing by a utility of new or changed rates or terms and conditions of service, the commission shall, within thirty days of the receipt of such filing, review the applications, documents, and submissions made with such filing to determine whether or not they conform to the minimum requirements of the commission regarding such filings as established by applicable rule, regulation, or commission order. If such applications, documents, or submissions fail to substantially conform with such requirements, they will be deemed defective and the filing

shall not be deemed to have been made until such applications, documents, and submissions are determined to be in conformity by the commission with minimum standards, and (b) nothing in this subsection shall preclude the jurisdictional utility and the commission from agreeing to a waiver or an extension of the one-hundred-eighty-day period.

(5) Except as provided in subsection (4) of this section, no change shall be made in any rate or in any term or condition of service pertaining to the service or rates of any such jurisdictional utility, without the consent of the commission. Within thirty days after such changes have been authorized by the commission or become effective as provided in subsection (4) of this section, copies of all tariffs, schedules, and classifications, and all terms or conditions of service, except those determined to be confidential under rules and regulations adopted by the commission, shall be available for public inspection in every office and facility open to the general public of such jurisdictional utility in this state.

(6) Except as to the time limits prescribed in subsection (4) of this section, proceedings under this section shall be conducted in accordance with rules and regulations adopted and promulgated pursuant to section 75-110.

Source: Laws 2003, LB 790, § 8; Laws 2012, LB1115, § 11.

66-1831 Public advocate; powers.

(1) The public advocate shall have the power to:

(a) Investigate the legality and reasonableness of rates, charges, and practices of jurisdictional utilities except for tariffs subject to section 66-1868;

(b) Petition for relief, request, initiate, and intervene in any proceeding before the commission concerning such utilities except for tariffs subject to section 66-1868;

(c) Represent and appear for ratepayers and the public in proceedings before the commission and in any negotiations or other measures to resolve disputes that give rise to such proceedings except for tariffs subject to section 66-1868;

(d) Represent and appear for ratepayers and the public in any negotiations or other measures to resolve disputes that give rise to proceedings before the commission and make and seek approval of agreements to settle such disputes except for tariffs subject to section 66-1868; and

(e) Make motions for rehearing or reconsideration, appeal, or seek judicial review of any order or decision of the commission regarding jurisdictional utilities except for tariffs subject to section 66-1868.

(2) The public advocate shall not advocate for or on behalf of any single individual, organization, or entity.

(3) The public advocate may enter into stipulations with other parties in any proceeding to balance the interests of those it represents with the interests of the jurisdictional utilities as a means of improving the quality of resulting decisions in a highly technical environment and minimizing the cost of regulation.

Source: Laws 2003, LB 790, § 31; Laws 2012, LB1115, § 12.

66-1839 Municipal Rate Negotiations Revolving Loan Fund; created; use; administration; audit; investment; loan repayment.

(1) The Municipal Rate Negotiations Revolving Loan Fund is created. The fund shall be used to make loans to cities for rate negotiations under section 66-1838 or negotiations or litigation under section 66-1867, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Only one loan may be made for each rate filing made by a jurisdictional utility within the scope of each section. Money in the Municipal Natural Gas Regulation Revolving Loan Fund that is not necessary to finance rate proceedings initiated prior to May 31, 2003, shall be transferred to the Municipal Rate Negotiations Revolving Loan Fund on May 31, 2003, and repayments of loans or other obligations owing to the Municipal Natural Gas Regulation Revolving Loan Fund on May 31, 2003, shall be deposited in the Municipal Rate Negotiations Revolving Loan Fund upon receipt. Any obligations against or commitments of money from the Municipal Natural Gas Regulation Revolving Loan Fund on May 31, 2003, shall be obligations or commitments of the Municipal Rate Negotiations Revolving Loan Fund.

(2) The Municipal Rate Negotiations Revolving Loan Fund shall be administered by the commission which shall adopt and promulgate rules and regulations to carry out this section. The rules and regulations shall include:

- (a) Loan application procedures and forms; and
- (b) Fund-use monitoring and quarterly accounting of fund use.

(3) Applicants for a loan from the fund shall provide a budget statement which specifies the proposed use of the loan proceeds. Such proceeds may only be used for the costs and expenses incurred by the city to analyze rate filings for the purposes specified in section 66-1838 or 66-1867. Such costs and expenses may include the cost of rate consultants and attorneys and any other necessary costs related to the negotiation process or litigation under section 66-1867. Disbursements from the fund shall be audited by the commission. The affected jurisdictional utility may petition the commission to initiate a proceeding to determine whether the disbursements from the fund were expended by the negotiating cities consistent with the requirements of this section.

(4) The fund shall be audited as part of the regular audit of the commission's budget, and copies of the audit shall be available to all cities and any jurisdictional utility. Audits conducted pursuant to this section are public records.

(5) 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. If the fund balance exceeds four hundred thousand dollars, the income on the money in the fund shall be credited to the permanent school fund until the balance of the Municipal Rate Negotiations Revolving Loan Fund falls below such amount.

(6) A city which receives a loan under this section shall be responsible to provide for the opportunity for all other cities engaged in the same negotiations with the same jurisdictional utility to participate in all negotiations. Such city shall not exclude any other city from the information or benefits accruing from the use of loan funds.

(7) Upon the conclusion of negotiations, regardless of the result, the loan shall be repaid by the jurisdictional utility to the commission within thirty days after the date upon which it is billed by the commission. The utility shall recover the amount paid on the loan by a special surcharge on ratepayers who are or will be affected by the rate increase request. These ratepayers may be billed on their monthly statements for a period not to exceed twelve months,

and the surcharge may be shown as a separate item on the statements as a charge for rate negotiation expenses.

Source: Laws 2003, LB 790, § 39; Laws 2009, LB658, § 3; Laws 2009, First Spec. Sess., LB3, § 42.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

66-1868 Rural infrastructure development; rural infrastructure surcharge tariff; filing in additional filings; agreement; contents; gas supply cost adjustment tariff; collection; refund; billing.

(1) Prior to undertaking rural infrastructure development pursuant to sections 66-2101 to 66-2107, a jurisdictional utility shall file a rural infrastructure surcharge tariff with the commission consistent with the agreement negotiated pursuant to subsection (2) of this section. The filing may be a joint filing with other jurisdictional utilities and may affect more than one electing city. With the rural infrastructure surcharge tariff, the jurisdictional utility shall file:

- (a) A map of the unserved or underserved area it proposes to serve;
- (b) A description of the project;
- (c) Information regarding support of the project from individuals, businesses, or government entities;
- (d) An executed agreement with the electing city or cities; and
- (e) The factors the jurisdictional utility has considered pursuant to section 66-2105.

(2) An agreement submitted pursuant to subdivision (1)(d) of this section may include, but shall not be limited to, terms and conditions that address the following:

- (a) Inclusion of representatives of the following possible parties: The electing city or cities; the jurisdictional utility; an interstate natural gas pipeline company; current and prospective customers; and any other interested parties;
- (b) Impact on other cities, jurisdictional utilities, interstate natural gas pipeline companies, and current and prospective customers;
- (c) The possibility of a joint filing with other jurisdictional utilities and agreements with other electing cities;
- (d) The factors set forth in section 66-2105;
- (e) The capacity of the project;
- (f) The potential to enhance demand for natural gas capacity created by the project;
- (g) Ownership of the project or parts of the project;
- (h) Participation by the electing city or cities and other parties to determine the customer or customers which will receive the additional natural gas capacity created by the project;
- (i) Any matters involving rights-of-way and easements and fees, taxes, and surcharges related thereto;
- (j) The payment of costs of the rural infrastructure development, including, but not limited to: (i) Proposed rate increases for customers of the electing city or cities and within a city's extraterritorial zoning jurisdiction, including direct

customers and residential or commercial customers; (ii) any city funds, including funds from the Local Option Municipal Economic Development Act, which may be used to pay for consultants, issue bonds, lower proposed rate increases, or otherwise finance the rural infrastructure development project; and (iii) contributions from direct customers or other sources, including, but not limited to, state or federal grants or loans; and

(k) Reimbursement of costs to the electing city or cities or ratepayers of the electing city or cities, including ratepayers in a city's extraterritorial zoning jurisdiction.

(3) A jurisdictional utility may file a gas supply cost adjustment tariff with the commission, consistent with the agreement negotiated pursuant to subsection (2) of this section, that adjusts the jurisdictional utility's residential or commercial customer rates to provide for the recovery of, but not limited to, costs related to ongoing gas supply, transmission, pipeline capacity, storage, financial instruments, or interstate pipeline charges or other related costs for rural infrastructure development.

(4) A rural infrastructure surcharge tariff or gas supply cost adjustment tariff shall become effective immediately upon filing with the commission of all items required under this section.

(5) Any rural infrastructure surcharge tariff or gas supply cost adjustment tariff, and any future changes thereto, applied to high-volume customers obtaining direct service and to general system residential or commercial customers subject to jurisdiction of the commission shall be calculated and implemented in a manner proposed by the jurisdictional utility consistent with the agreement negotiated pursuant to subsection (2) of this section.

(6) The rural infrastructure surcharge tariff or gas supply cost adjustment tariff, and any future changes thereto, shall first be applied to customers receiving direct service from the rural infrastructure development. If such resulting rates are uneconomic or commercially unreasonable to those customers, the jurisdictional utility shall recover the costs above the rates determined by the jurisdictional utility to be economical or commercially reasonable from general system residential or commercial customers in the electing city in a manner proposed by the jurisdictional utility consistent with the agreement negotiated pursuant to subsection (2) of this section.

(7) A jurisdictional utility may collect a rural infrastructure surcharge or gas supply cost adjustment until costs are fully recovered even if the jurisdictional utility has not filed for or is the subject of a new general rate proceeding within that period of time.

(8) No more than once annually, the commission may initiate a proceeding and conduct a public hearing to determine whether the rural infrastructure surcharge of a jurisdictional utility reflects the actual costs of the rural infrastructure development and to reconcile any amounts collected from ratepayers with actual costs incurred by the jurisdictional utility. The commission shall make a decision as to whether the rural infrastructure surcharge reflects actual costs within ninety days after initiating the proceeding. The rural infrastructure surcharge shall be presumed to reflect the actual costs of the rural infrastructure development, unless the contrary is shown.

(9) Any refund, including interest thereon, shall be made to presently served ratepayers in the electing city by an appropriate adjustment shown as a credit on subsequent bills during a period selected by the jurisdictional utility, not to

exceed twelve months, or by a cash refund at the option of the jurisdictional utility. The jurisdictional utility shall not be required to provide such refunds to ratepayers served at competitively set or negotiated rates or under alternative rate mechanisms when the ratepayer is paying less than the full rate determined pursuant to the gas supply cost adjustment rate schedule or under a customer choice or unbundling program.

(10) A jurisdictional utility is not required to proceed with rural infrastructure development in an unserved or underserved area unless required to do so under an agreement with an electing city or cities.

(11) A jurisdictional utility utilizing a rural infrastructure surcharge shall separately identify the surcharge on each customer's bill using language sufficiently clear to identify the purpose of the surcharge.

(12) For purposes of this section:

(a) City means a city of the first or second class or village;

(b) Electing city means a city that has elected through its governing body to benefit from additional natural gas supply made possible by a rural infrastructure development and has executed an agreement with the jurisdictional utility serving the city and the city's extraterritorial zoning jurisdiction to provide the additional natural gas supply in accordance with terms and conditions mutually acceptable to the city and jurisdictional utility consistent with the agreement negotiated pursuant to subsection (2) of this section;

(c) Rural infrastructure development means planning, financing, development, acquisition, construction, owning, operating, and maintaining a natural gas pipeline facility or entering into agreements with an interstate pipeline for existing, new, or expanded capacity on the interstate pipeline's system for the transportation of natural gas necessary to supply unserved or underserved areas; and

(d) Rural infrastructure surcharge means a surcharge through which a jurisdictional utility may recover costs for rural infrastructure development.

Source: Laws 2012, LB1115, § 10.

Cross References

Local Option Municipal Economic Development Act, see section 18-2701.

ARTICLE 19

WIND MEASUREMENT EQUIPMENT

Section

66-1901. Wind measurement equipment; registration with Department of Aeronautics; data available to public; removal of equipment; report required.

66-1901 Wind measurement equipment; registration with Department of Aeronautics; data available to public; removal of equipment; report required.

(1) All wind measurement equipment associated with the development or study of wind-powered electric generation, whether owned or leased, shall be registered with the Department of Aeronautics if the equipment is at least fifty feet in height above the ground and is located outside the boundaries of any incorporated city or village.

(2)(a) On or before January 1, 2013, all such equipment installed prior to July 15, 2010, shall be either lighted, marked with balls at least twenty-one inches in

diameter, painted, or modified in some other manner so it is recognizable in clear air during daylight hours from a distance of not less than two thousand feet.

(b) All such equipment installed on or after July 15, 2010, shall be either lighted or painted.

(3) The person or firm that owns or leases equipment described in subsection (1) of this section shall register it within fifteen days after July 15, 2010, in the case of equipment installed before such date or within thirty days after installation in the case of equipment installed on or after such date. Such registration shall include the equipment's exact location and height above the ground, the name of the person or firm registering the equipment, the method used to make the equipment recognizable as provided in subsection (2) of this section, and the name and telephone number of a contact person for any issues related to such equipment. Within five days after receiving such registration, the department shall make all data included in the registration available to the public.

(4) Any person or firm that removes equipment subject to the registration requirements of this section shall report the removal to the department within thirty days after such removal.

Source: Laws 2010, LB1048, § 8.

ARTICLE 20

NATURAL GAS FUEL BOARD

Section

66-2001. Natural Gas Fuel Board; established; members; terms; vacancy; meetings; duties; State Energy Office; administrative support.

66-2001 Natural Gas Fuel Board; established; members; terms; vacancy; meetings; duties; State Energy Office; administrative support.

(1) The Natural Gas Fuel Board is hereby established to advise the State Energy Office regarding the promotion of natural gas as a motor vehicle fuel in Nebraska. The board shall provide recommendations relating to:

(a) Distribution, infrastructure, and workforce development for natural gas to be used as a motor vehicle fuel;

(b) Loans, grants, and tax incentives to encourage the use of natural gas as a motor vehicle fuel for individuals and public and private fleets; and

(c) Such other matters as it deems appropriate.

(2) The board shall consist of eight members appointed by the Governor. The Governor shall make the initial appointments by October 1, 2012. The board shall include:

(a) One member representing a jurisdictional utility as defined in section 66-1802;

(b) One member representing a metropolitan utilities district;

(c) One member representing the interests of the transportation industry in the state;

(d) One member representing the interests of the business community in the state, specifically fueling station owners or operators;

(e) One member representing natural gas marketers or pipelines in the state;

(f) One member representing automobile dealerships or repair businesses in the state;

(g) One member representing labor interests in the state; and

(h) One member representing environmental interests in the state, specifically air quality.

(3) All appointments shall be subject to the approval of a majority of the members of the Legislature if the Legislature is in session, and if the Legislature is not in session, any appointment to fill a vacancy shall be temporary until the next session of the Legislature, at which time a majority of the members of the Legislature may approve or disapprove such appointment.

(4) Members shall be appointed for terms of four years, except that of the initial appointees the terms of the members representing a jurisdictional utility and a metropolitan utilities district shall expire on September 30, 2015, the terms of the members representing the transportation industry, the business community, natural gas marketers or pipelines, and automobile dealerships or repair businesses shall expire on September 30, 2014, and the terms of the members representing labor and environmental interests shall expire on September 30, 2013. Members may be reappointed. A member shall serve until a successor is appointed and qualified.

(5) A vacancy on the board shall exist in the event of death, disability, resignation, or removal for cause of a member. Any vacancy on the board arising other than from the expiration of a term shall be filled by appointment for the unexpired portion of the term. An appointment to fill a vacancy shall be made by the Governor with the approval of a majority of the Legislature, and any person so appointed shall have the same qualifications as the person whom he or she succeeds.

(6) The board shall meet at least once annually.

(7) The members shall not be reimbursed for expenses associated with carrying out their duties as members.

(8) The State Energy Office shall provide administrative support to the board as necessary so that the board may carry out its duties.

Source: Laws 2012, LB1087, § 1.

ARTICLE 21

RURAL INFRASTRUCTURE DEVELOPMENT

Section

66-2101. Legislative declaration.

66-2102. Terms, defined.

66-2103. City; utilization of funds; powers.

66-2104. Rural infrastructure development; jurisdictional utility; powers.

66-2105. Jurisdictional utility; consider factors.

66-2106. Jurisdictional utility; applicability of other law.

66-2107. Sections; applicability.

66-2101 Legislative declaration.

The Legislature declares it is the public policy of this state to provide adequate natural gas pipeline facilities and service in order to expand and diversify the Nebraska economy resulting in increased employment, new and expanded businesses and industries, and new and expanded sources of tax revenue.

Source: Laws 2012, LB1115, § 1.

66-2102 Terms, defined.

For purposes of sections 66-2101 to 66-2107:

- (1) City means a city of the first or second class or village;
- (2) Jurisdictional utility has the same meaning as in section 66-1802;
- (3) Natural gas pipeline facility means a pipeline, pump, compressor, or storage or other facility, structure, or property necessary, useful, or incidental in the transportation of natural gas; and
- (4) Rural infrastructure development means planning, financing, development, acquisition, construction, owning, operating, and maintaining a natural gas pipeline facility or entering into agreements with an interstate pipeline for existing, new, or expanded capacity on the interstate pipeline's system for the transportation of natural gas necessary to supply unserved or underserved areas; and
- (5) Unserved or underserved area means an area in this state lacking adequate natural gas pipeline capacity to meet the demand of existing or potential end-use customers as determined by the jurisdictional utility presently serving the area. Unserved or underserved area does not include any area within a city of the primary or metropolitan class.

Source: Laws 2012, LB1115, § 2.

66-2103 City; utilization of funds; powers.

A city that has been authorized to utilize funds pursuant to the Local Option Municipal Economic Development Act for purposes of sections 66-1868 and 66-2101 to 66-2107 shall have all necessary powers to implement and to carry out its powers and duties under such sections.

Source: Laws 2012, LB1115, § 3.

Cross References

Local Option Municipal Economic Development Act, see section 18-2701.

66-2104 Rural infrastructure development; jurisdictional utility; powers.

A jurisdictional utility may undertake rural infrastructure development necessary to supply unserved or underserved areas in or adjacent to areas presently served by the jurisdictional utility and not served by another jurisdictional utility.

Source: Laws 2012, LB1115, § 4.

66-2105 Jurisdictional utility; consider factors.

Prior to undertaking rural infrastructure development, a jurisdictional utility shall consider factors such as the economic impact to the area, economic feasibility, whether other options may be more in the public interest, such as utilization of any existing or planned interstate or intrastate pipeline facilities of private persons, companies, firms, or corporations, and the likelihood of successful completion and ongoing operation of the facility.

Source: Laws 2012, LB1115, § 5.

66-2106 Jurisdictional utility; applicability of other law.

A jurisdictional utility shall not be subject to the State Natural Gas Regulation Act to the extent it is exercising power granted in section 66-2104 except as specifically provided otherwise but shall be subject to sections 75-501 to 75-503.

Source: Laws 2012, LB1115, § 6.

Cross References

State Natural Gas Regulation Act, see section 66-1801.

66-2107 Sections; applicability.

Sections 66-2101 to 66-2106 do not apply to a natural gas utility owned or operated by a city or a metropolitan utilities district.

Source: Laws 2012, LB1115, § 7.

CHAPTER 67

PARTNERSHIPS

Article.

2. Nebraska Uniform Limited Partnership Act.
 Part I—General Provisions. 67-234.
 Part II—Formation; Certificate of Limited Partnership. 67-248.02.
 Part XI—Miscellaneous. 67-296.
 Part XII—Conversion. 67-297 to 67-2,100.
4. Uniform Partnership Act of 1998.
 Part IX—Conversions and Mergers. 67-450.
 Part X—Limited Liability Partnership. 67-455, 67-456.

ARTICLE 2

NEBRASKA UNIFORM LIMITED PARTNERSHIP ACT

PART I. GENERAL PROVISIONS

Section

67-234. Limited partnership name.

PART II. FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP

67-248.02. Merger or consolidation; procedure; effect.

PART XI. MISCELLANEOUS

67-296. Act, how cited.

PART XII. CONVERSION

67-297. Conversion; plan.

67-298. Conversion; articles of conversion.

67-299. Effect of conversion.

67-2,100. Existing conversion; effect.

PART I

GENERAL PROVISIONS

67-234 Limited partnership name.

The name of each limited partnership as set forth in its certificate of limited partnership:

(1) Shall contain the words limited partnership or limited or the abbreviations L.P. or Ltd.;

(2) May not contain the name of a limited partner unless (i) it is also the name of a general partner, the corporate name of a corporate general partner, or the company name of a limited liability company general partner, (ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner, or (iii) the use of the name of a limited partner in the name of the limited partnership is merely coincidental and not intended to mislead the public to believe that such limited partner is a general partner;

(3) Shall not be the same as or deceptively similar to, upon the records in the office of the Secretary of State, a trade name registered in this state pursuant to sections 87-208 to 87-219.01;

(4) Shall not be the same as or deceptively similar to, upon the records in the office of the Secretary of State, any other business entity name registered or on file with the Secretary of State pursuant to Nebraska law, except that a limited partnership may register under any name which is deceptively similar to, upon the records in the office of the Secretary of State, a business entity name registered or on file with the Secretary of State pursuant to Nebraska law with the consent of the other business entity or with the transfer of such name by the other business entity, which written consent or transfer shall be filed with the Secretary of State; and

(5) May contain the following words or abbreviations of like import: Company; association; club; foundation; fund; institute; society; union; syndicate; or trust.

Source: Laws 1981, LB 272, § 2; Laws 1989, LB 482, § 7; Laws 1993, LB 121, § 401; Laws 1997, LB 44, § 10; Laws 2003, LB 464, § 7; Laws 2011, LB462, § 5.

PART II

FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP

67-248.02 Merger or consolidation; procedure; effect.

(a)(1) A domestic limited partnership may merge or consolidate with one or more domestic or foreign limited partnerships or other business entities pursuant to an agreement or plan of merger or consolidation adopted in accordance with this section setting forth:

(A) The name of each limited partnership or business entity that is a party to the merger or consolidation;

(B) The name, type of business entity, and jurisdiction of formation of the surviving limited partnership or business entity into which the limited partnership and such other business entities will merge or the name, type of business entity, and jurisdiction of formation of the new business entity resulting from the consolidation of the limited partnership and the other business entities that are party to a plan of consolidation;

(C) The terms and conditions of the merger or consolidation, including the manner and basis of converting the interests of the partners, members, or shareholders, as the case may be, of each limited partnership or business entity that is a party to such merger or consolidation into interests or obligations of the surviving or new limited partnership or business entity resulting therefrom or into money or other property in whole or in part; and

(D) Such other provisions as the merging or consolidating limited partnerships or business entities may desire.

(2) Notwithstanding the provisions of section 67-450, an agreement or plan of merger or consolidation shall be approved (A) by each domestic limited partnership that is a party thereto in accordance with the voting provisions of its partnership agreement or, if not so provided, by each general partner and by limited partners who own in the aggregate more than a fifty percent interest in the profits of such limited partnership owned by all of the limited partners or, if there is more than one class or group of limited partners, then by limited partners of each class or group of limited partners, in either case, who own in the aggregate more than fifty percent of the then current percentage of other

interest in the profits of such limited partnership owned by all of the limited partners in each such class or group and (B) by each other business entity that is a party thereto in accordance with the laws under which such business entity was formed and in accordance with the applicable requirements of its organizational documents. Notwithstanding such approval, at any time before the articles of merger or consolidation are filed, an agreement or plan of merger or of consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in such agreement or plan of merger or of consolidation.

(b) As used in this section:

(1) Business entity means a domestic or foreign corporation; a domestic or foreign partnership; a domestic or foreign limited partnership; or a domestic or foreign limited liability company; and

(2) Organizational documents includes:

(A) For a domestic or foreign corporation, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute or comparable records as provided in its governing statute;

(B) For a domestic or foreign partnership, its partnership agreement;

(C) For a domestic or foreign limited partnership, its certificate of limited partnership and partnership agreement; and

(D) For a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement or comparable records as provided in its governing statute.

(c) After a plan of merger or consolidation with respect to a domestic limited partnership is approved in accordance with this section, the surviving or resulting business entity shall deliver to the Secretary of State for filing articles of merger or consolidation setting forth:

(1) The plan of merger or consolidation;

(2) A statement to the effect that the requisite approval was obtained by the partners, members, or shareholders, as the case may be, of each business entity that is a party to such plan of merger or consolidation; and

(3) If the surviving or resulting business entity of a merger or consolidation is not a domestic business entity, an agreement by the surviving or resulting business entity that it may be served with process within or outside this state in any proceeding in the courts of this state for the enforcement of any obligation of such former domestic limited partnership.

(d) If the surviving or resulting business entity of a merger or consolidation under this section is a domestic corporation, then the merger or consolidation shall become effective and shall have the effects provided in sections 21-2,161 to 21-2,168. If the surviving or resulting business entity of a merger or consolidation under this section is a domestic limited liability company, then the merger or consolidation shall become effective and shall have the effects provided in sections 21-170 to 21-174. If the surviving or resulting business entity of a merger or consolidation under this section is a domestic partnership other than a limited partnership, then the merger or consolidation shall become effective and shall have the effects provided in sections 67-450 to 67-452. If the surviving or resulting business entity of a merger or consolidation is a domestic limited partnership, then:

(1) The merger or consolidation shall take effect on the later of:

(A) The approval of the plan or agreement of merger or consolidation as provided in this section;

(B) The filing of all documents required by law to be filed as a condition to the effectiveness of the merger or consolidation; or

(C) Any effective date specified in the plan or agreement of merger or consolidation;

(2) The several limited partnerships and other business entities which are parties to the plan or agreement of merger or consolidation shall be a single limited partnership which, in the case of a merger, shall be that limited partnership designated in the merger plan or agreement as the surviving limited partnership and, in the case of a consolidation, shall be the new limited partnership provided for in the consolidation plan or agreement;

(3) The separate existence of all limited partnerships and other business entities which are parties to the plan or agreement of merger or consolidation, except the surviving or new limited partnership, shall cease;

(4) The surviving or new limited partnership shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a limited partnership organized under the Nebraska Uniform Limited Partnership Act;

(5) The surviving or new limited partnership shall possess all the rights, privileges, immunities, and powers, of a public as well as of a private nature, of each of the merging or consolidating limited partnerships and other business entities, subject to the Nebraska Uniform Limited Partnership Act. All property, real, personal, and mixed, all debts due on whatever account, all other things and causes of actions, and all and every other interest belonging to or due to any of the limited partnerships and other business entities, as merged or consolidated, shall be taken and deemed to be transferred to and vested in the surviving or new limited partnership without further act and deed and shall thereafter be the property of the surviving or new limited partnership as they were of any of such merging or consolidating business entities. The title to any real property or any interest in such property vested in any of such merging or consolidating business entities shall not revert or be in any way impaired by reason of such merger or consolidation;

(6) Such surviving or new limited partnership shall be responsible and liable for all the liabilities and obligations of each of the limited partnerships and other business entities so merged or consolidated. Any claim existing or action or proceeding pending by or against any of such limited partnerships or other business entities may be prosecuted as if such merger or consolidation had not taken place or such surviving or new limited partnership may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such limited partnerships or other business entities shall be impaired by such merger or consolidation; and

(7) The equity interests or securities of each limited partnership or other business entity which is a party to the plan or agreement of merger or consolidation that are, under the terms of the merger or consolidation, to be converted or exchanged, shall cease to exist, and the holders of such equity interests or securities shall thereafter be entitled only to the cash, property interests, or securities into which they shall have been converted in accordance

with the terms of the plan or agreement of merger or consolidation, subject to any rights under sections 21-2,171 to 21-2,183 or the Nebraska Uniform Limited Liability Company Act or other applicable law.

Source: Laws 1989, LB 482, § 23; Laws 1990, LB 1228, § 6; Laws 1994, LB 884, § 84; Laws 1995, LB 109, § 227; Laws 1997, LB 523, § 69; Laws 2010, LB888, § 101; Laws 2012, LB1018, § 9; Laws 2013, LB283, § 2; Laws 2014, LB749, § 293.
Operative date January 1, 2016.

Cross References

Nebraska Uniform Limited Liability Company Act, see section 21-101.

PART XI

MISCELLANEOUS

67-296 Act, how cited.

Sections 67-233 to 67-2,100 shall be known and may be cited as the Nebraska Uniform Limited Partnership Act.

Source: Laws 1981, LB 272, § 64; Laws 1989, LB 482, § 63; Laws 2012, LB1018, § 14.

PART XII

CONVERSION

67-297 Conversion; plan.

(a) A domestic limited partnership may convert into a domestic partnership pursuant to sections 67-446 to 67-453. A domestic limited partnership may convert into a domestic limited liability company pursuant to sections 21-170 to 21-184 and may convert into a foreign limited liability company in accordance with this section and the applicable law of the state of formation of such foreign limited liability company. In each case, the conversion of a domestic limited partnership into such other type of entity shall be made pursuant to a plan of conversion setting forth the information required in subdivision (b)(1) of this section and such information required pursuant to the statute under which such conversion shall be effected. Unless otherwise provided in its organizational documents, a plan of conversion shall be approved by the domestic limited partnership by each general partner and by the limited partners who own in the aggregate more than a fifty percent interest in the profits of such limited partnership owned by all of the limited partners or, if there is more than one class or group of limited partners, then by limited partners of each class or group of limited partners, in either case, who own in the aggregate more than fifty percent of the then current percentage of other interest in the profits of such limited partnership owned by all of the limited partners in each such class or group. Notwithstanding such approval, at any time before the articles of conversion are filed, a plan of conversion may be terminated or amended pursuant to a provision for such termination or amendment contained in the plan of conversion.

(b)(1) A plan of conversion shall be in a record and shall include all of the following:

(A) The name of the domestic limited partnership before conversion;

(B) The name and form of the converted entity after conversion;

(C) The terms and conditions of the conversion, including the manner and basis for converting the interests of the limited partnership into any combination of obligations, interests, or rights in the converted organization or other consideration; and

(D) The organizational documents of the converted business entity.

(2) For purposes of this section, record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Source: Laws 2012, LB1018, § 10.

67-298 Conversion; articles of conversion.

(a) After a plan of conversion is approved, a domestic limited partnership that is being converted shall deliver to the Secretary of State for filing articles of conversion which shall include all of the following:

(1) A statement that the domestic limited partnership has been converted into another entity;

(2) The name and form of the other entity and the jurisdiction of its governing statute;

(3) The date the conversion is effective under the governing statute of the converted entity;

(4) A statement that the conversion was approved as required by sections 67-446 to 67-453;

(5) A statement that the conversion was approved as required by the governing statute of the converted entity; and

(6) A domestic limited partnership converting into a foreign limited liability company shall deliver to the office of the Secretary of State for filing (A) a certificate which sets forth all of the information required to be in the certificate or other instrument of conversion filed pursuant to the laws under which the resulting foreign limited liability company is formed and (B) an agreement that the resulting foreign limited liability company may be served with process within or outside this state in any proceeding in the courts of this state for the enforcement of any obligation of the former domestic corporation.

(b) The conversion shall become effective as provided by the Nebraska Uniform Limited Liability Company Act, the Uniform Partnership Act of 1998, or the governing statute of the foreign limited liability company.

Source: Laws 2012, LB1018, § 11; Laws 2013, LB283, § 3.

Cross References

Nebraska Uniform Limited Liability Company Act, see section 21-101.

Uniform Partnership Act of 1998, see section 67-401.

67-299 Effect of conversion.

(a) A domestic limited partnership that has been converted pursuant to the Nebraska Uniform Limited Partnership Act is for all purposes the same domestic limited partnership that existed before the conversion.

(b) When a conversion takes effect, all of the following apply:

(1) All property owned by the converting entity remains vested in the converted entity. The converting entity shall file a certificate of conversion in the office of the register of deeds for each county in which the converting entity owns real property. Such certificate of conversion shall be indexed against the real property owned;

(2) All debts, liabilities, and other obligations of the converting entity continue as obligations of the converted entity;

(3) An action or proceeding pending by or against the converting entity may be continued as if the conversion had not occurred;

(4) The shares or interests of the converting entity are reclassified into shares, interests, other securities, obligations, rights to acquire shares, interests, or other securities, or into cash or other property in accordance with the plan of conversion and the partners, limited partners, or interest holders of the converting entity are entitled only to the rights provided to them under the terms of the conversion and to any appraisal rights they may have under the organic law of the converting entity; and

(5) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain vested in the converted entity and, except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.

(c) A converted entity that is a foreign limited liability company consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting corporation if, before the conversion, the converting corporation was subject to suit in this state on the obligation.

Source: Laws 2012, LB1018, § 12.

67-2,100 Existing conversion; effect.

Any conversion of a limited partnership to a limited liability company filed with the Secretary of State's office and existing on or before July 19, 2012, shall continue to be valid.

Source: Laws 2012, LB1018, § 13.

ARTICLE 4

UNIFORM PARTNERSHIP ACT OF 1998

PART IX. CONVERSIONS AND MERGERS

Section

67-450. Merger of partnerships.

PART X. LIMITED LIABILITY PARTNERSHIP

67-455. Name.

67-456. Annual report; certificate of authority.

PART IX

CONVERSIONS AND MERGERS

67-450 Merger of partnerships.

(1) Pursuant to a plan of merger approved as provided in subsection (3) of this section, a partnership may be merged with one or more partnerships or limited partnerships.

(2) The plan of merger must set forth:

(a) The name of each partnership or limited partnership that is a party to the merger;

(b) The name of the surviving entity into which the other partnerships or limited partnerships will merge;

(c) Whether the surviving entity is a partnership or a limited partnership and the status of each partner;

(d) The terms and conditions of the merger;

(e) The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property in whole or in part; and

(f) The street address of the surviving entity's chief executive office.

(3) The plan of merger must be approved in the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement.

(4) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(5) The merger takes effect on the later of:

(a) The approval of the plan of merger by all parties to the merger, as provided in subsection (3) of this section;

(b) The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(c) Any effective date specified in the plan of merger.

Source: Laws 1997, LB 523, § 50; Laws 2012, LB1018, § 15.

PART X

LIMITED LIABILITY PARTNERSHIP

67-455 Name.

(1) The name of a limited liability partnership shall:

(a) End with "registered limited liability partnership", "limited liability partnership", "R.L.L.P.", "RLLP", "L.L.P.", or "LLP";

(b) Not be the same as or deceptively similar to, upon the records in the office of the Secretary of State, a trade name registered in this state pursuant to sections 87-208 to 87-219.01; and

(c) Not be the same as or deceptively similar to, upon the records in the office of the Secretary of State, any other business entity name registered or on file with the Secretary of State pursuant to Nebraska law.

(2) A limited liability partnership may register under any name which is deceptively similar to, upon the records in the office of the Secretary of State, any other business entity name registered or on file with the Secretary of State pursuant to Nebraska law with the written consent of the other business entity or with the transfer of the name by the other business entity. Written consent to the use of the name or written consent to the transfer of the name shall be filed with the Secretary of State.

Source: Laws 1997, LB 523, § 55; Laws 2003, LB 464, § 9; Laws 2011, LB462, § 6.

67-456 Annual report; certificate of authority.

(1) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this state, shall file an annual report in the office of the Secretary of State which contains:

(a) The name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;

(b) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any; and

(c) If the partnership does not have an office in this state, the name and street address and post office box number, if any, of the partnership's current agent for service of process.

(2) Any limited liability partnership, or foreign limited liability partnership authorized to transact business in this state, engaging in the practice of law in this state shall file with its annual report a current certificate of authority from the Nebraska Supreme Court.

(3) An annual report and certificate of authority, if applicable, must be filed between January 1 and April 1 of each year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this state.

(4) The Secretary of State may revoke the statement of qualification of a partnership that fails to file an annual report and certificate of authority, if applicable, when due or pay the required filing fee provided in section 67-462. To do so, the Secretary of State shall provide the partnership at least sixty days' written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report or certificate of authority, if applicable, that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is not effective if the annual report and certificate of authority, if applicable, is filed and the fee is paid before the effective date of the revocation.

(5) A revocation under subsection (4) of this section only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(6) A partnership whose statement of qualification has been revoked may apply to the Secretary of State for reinstatement within two years after the effective date of the revocation. The application must state:

(a) The name of the partnership and the effective date of the revocation; and

(b) That the ground for revocation either did not exist or has been corrected.

(7) A reinstatement under subsection (6) of this section relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

(8) A correction or an amendment to the annual report may be filed at any time.

Source: Laws 1997, LB 523, § 56; Laws 2004, LB 16, § 7; Laws 2008, LB383, § 8; Laws 2014, LB774, § 5.
Effective date July 18, 2014.



CHAPTER 68

PUBLIC ASSISTANCE

Article.

1. Miscellaneous Provisions. 68-130 to 68-158.
6. Social Security. 68-601 to 68-631.
7. Department Duties. 68-721.
9. Medical Assistance Act. 68-901 to 68-974.
10. Assistance, Generally.
 - (a) Assistance to the Aged, Blind, or Disabled. 68-1006.01.
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 - (a) Disabled Persons and Family Support Act. 68-1518.
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17. Welfare Reform.
 - (a) Welfare Reform Act. 68-1708 to 68-1735.04.
18. ICF/DD Reimbursement Protection Act. 68-1801 to 68-1809.
19. Nursing Facility Quality Assurance Assessment Act. 68-1901 to 68-1930.
20. Children's Health and Treatment Act. 68-2001 to 68-2005.

ARTICLE 1

MISCELLANEOUS PROVISIONS

Section

- 68-130. Counties; maintain office and service facilities; review by department.
- 68-153. Employable recipients; terms, defined.
- 68-156. Repealed. Laws 2013, LB 156, § 3.
- 68-158. Program to provide amino acid-based elemental formulas; Department of Health and Human Services; duties; report.

68-130 Counties; maintain office and service facilities; review by department.

(1) Counties shall maintain, at no additional cost to the Department of Health and Human Services, office and service facilities used for the administration of the public assistance programs as such facilities existed on April 1, 1983.

(2) The county board of any county may request in writing that the department review office and service facilities provided by the county for the department to determine if the department is able to reduce or eliminate office and service facilities within the county. The department shall respond in writing to such request within thirty days after receiving the request. The final decision with respect to maintaining, reducing, or eliminating office and service facilities in such county shall be made by the department, and the county may reduce or eliminate office and service facilities if authorized by such final decision.

Source: Laws 1982, LB 602, § 5; Laws 1983, LB 604, § 21; Laws 1996, LB 1044, § 289; Laws 2007, LB296, § 238; Laws 2011, LB234, § 1.

68-153 Employable recipients; terms, defined.

For purposes of sections 68-151 to 68-155:

(1) Community service shall mean labor performed for a governmental agency, nonprofit corporation, or health care corporation;

(2) Employable recipient shall mean any individual who is eighteen years of age or older, who is receiving county general assistance pursuant to sections 68-131 to 68-148, who is not engaged in full-time employment or satisfactorily participating in a county-approved vocational, rehabilitation, job training, or community service program, and who is not rendered unable to work by illness or significant and substantial mental or physical incapacitation to the degree and of the duration that the illness or incapacitation prevents the person from performing designated vocational, rehabilitation, job training, or community service activities;

(3) Full-time employment shall mean being employed at least twenty-five hours per week and receiving wages, tips, and other compensation which meet the applicable federal minimum wage requirements; and

(4) Job training program shall mean vocational training in technical job skills and equivalent knowledge.

Source: Laws 1990, LB 422, § 3; Laws 1991, LB 227, § 3; Laws 2013, LB156, § 1.

68-156 Repealed. Laws 2013, LB 156, § 3.**68-158 Program to provide amino acid-based elemental formulas; Department of Health and Human Services; duties; report.**

The Department of Health and Human Services shall establish a program to provide amino acid-based elemental formulas for the diagnosis and treatment of Immunoglobulin E and non-Immunoglobulin E mediated allergies to multiple food proteins, food-protein-induced enterocolitis syndrome, eosinophilic disorders, and impaired absorption of nutrients caused by disorders affecting the absorptive surface, functional length, and motility of the gastrointestinal tract, when the ordering physician has issued a written order stating that the amino acid-based elemental formula is medically necessary for the treatment of a disease or disorder. Up to fifty percent of the actual out-of-pocket cost, not to exceed twelve thousand dollars, for amino acid-based elemental formulas shall be available to an individual without fees each twelve-month period. The department shall distribute funds on a first-come, first-served basis. Nothing in this section is deemed to be an entitlement. The maximum total General Fund expenditures per year for amino acid-based elemental formulas shall not exceed two hundred fifty thousand dollars each fiscal year in FY2014-15 and FY2015-16. The Department of Health and Human Services shall provide an electronic report on the program to the Legislature annually on or before December 15 of each year.

Source: Laws 2014, LB254, § 3.
Operative date July 1, 2014.

ARTICLE 6
SOCIAL SECURITY

Section

- 68-601. Social security; policy.
68-602. Terms, defined.
68-603. Agreement with federal government; state agency; approval of Governor.
68-604. Agreement with federal government; instrumentality jointly created with other state.
68-605. Contributions by state employees; amount.
68-608. Coverage by political subdivisions; plan; modification; approval by state agency.
68-610. Coverage by political subdivisions; amount; payment.
68-612. Repealed. Laws 2010, LB 684, § 13.
68-613. Repealed. Laws 2010, LB 684, § 13.
68-620. Cities and villages; special levy; addition to levy limitations; contribution to state agency.
68-621. Terms, defined.
68-622. Referendum; persons eligible to vote; Governor; powers.
68-631. Metropolitan utilities district; social security; employees; separate group; referendum; effect.

68-601 Social security; policy.

(1) In order to extend to the employees of the state and its political subdivisions and to the dependents and survivors of such employees the basic protection accorded to others by the old age and survivors insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the Legislature, subject to the limitations of sections 68-601 to 68-631, that such steps be taken as to provide such protection to employees of the State of Nebraska and its political subdivisions on as broad a basis as is permitted under the act.

(2) In conformity with the policy of the Congress of the United States of America, it is hereby declared to be the policy of the State of Nebraska that the protection afforded employees in positions covered by retirement systems on the date the state agreement is made applicable to service performed in such positions or receiving periodic benefits under such retirement systems at such time will not be impaired as a result of making the agreement so applicable or as a result of legislative or executive action taken in anticipation or in consequence thereof and that the benefits provided by the Social Security Act and made available to employees of the State of Nebraska and of political subdivisions thereof or instrumentalities jointly created by the state and any other state or states, who are or may be members of a retirement system, shall be supplementary to the benefits provided by such retirement system.

Source: Laws 1951, c. 297, § 1, p. 977; Laws 1955, c. 264, § 1, p. 812; Laws 1990, LB 820, § 1; Laws 2000, LB 1216, § 8; Laws 2010, LB684, § 1.

68-602 Terms, defined.

For purposes of sections 68-601 to 68-631, unless the context otherwise requires:

(1) Wages shall mean all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash, except that wages shall not include that part of such remuneration which, even if it were

for employment within the meaning of the Federal Insurance Contributions Act, would not constitute wages within the meaning of the act;

(2) Employment shall mean any service performed by an employee in the employ of the State of Nebraska or any political subdivision thereof for such employer except (a) service which, in the absence of an agreement entered into under sections 68-601 to 68-631, would constitute employment as defined in the Social Security Act or (b) service which under the act may not be included in an agreement between the state and the Secretary of Health and Human Services entered into under sections 68-601 to 68-631. Service which under the act may be included in an agreement only upon certification by the Governor in accordance with section 218(d)(3) of the act shall be included in the term employment if and when the Governor issues, with respect to such service, a certificate to the Secretary of Health and Human Services pursuant to subsection (2) of section 68-624;

(3) Employee shall include an officer of the state or a political subdivision thereof;

(4) State agency shall mean the Director of Administrative Services;

(5) Secretary of Health and Human Services shall include any individual to whom the Secretary of Health and Human Services has delegated any functions under the Social Security Act with respect to coverage under such act of employees of states and their political subdivisions and, with respect to any action taken prior to April 11, 1953, includes the Federal Security Administrator and any individual to whom such administrator had delegated any such function;

(6) Political subdivision shall include an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is essentially legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision;

(7) Social Security Act shall mean the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the Social Security Act, including regulations and requirements issued pursuant thereto, as such act has been amended or recodified to December 25, 1969, and may from time to time hereafter be amended or recodified; and

(8) Federal Insurance Contributions Act shall mean Chapter 21, subchapters A, B, and C of the Internal Revenue Code, and the term employee tax shall mean the tax imposed by section 3101 of such code.

Source: Laws 1951, c. 297, § 2, p. 978; Laws 1955, c. 264, § 2, p. 813; Laws 1969, c. 536, § 1, p. 2181; Laws 1977, LB 194, § 1; Laws 1984, LB 933, § 2; Laws 1990, LB 820, § 2; Laws 1995, LB 574, § 57; Laws 2000, LB 1216, § 9; Laws 2010, LB684, § 2.

68-603 Agreement with federal government; state agency; approval of Governor.

The state agency, with the approval of the Governor, is hereby authorized to enter, on behalf of the State of Nebraska, into an agreement with the Secretary of Health and Human Services, consistent with the terms and provisions of sections 68-601 to 68-631, for the purpose of extending the benefits of the

federal old age and survivors' insurance system to employees of the state or any political subdivision thereof with respect to services specified in such agreement which constitute employment. The state agency, with the approval of the Governor, is further authorized to enter, on behalf of the State of Nebraska, into such modifications and amendments to such agreement with the Secretary of Health and Human Services as shall be consistent with the terms and provisions of sections 68-601 to 68-631 if such modification or amendment is necessary or desirable to secure the benefits and exemptions allowable to the State of Nebraska or any political subdivision thereof or to any employee of the State of Nebraska or any political subdivision thereof provided by the Social Security Act, the Federal Insurance Contributions Act, or the employee tax. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and Secretary of Health and Human Services shall agree upon, but, except as may be otherwise required by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that:

(1) Benefits will be provided for employees whose services are covered by the agreement and their dependents and survivors on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act;

(2) The state will pay to the Secretary of the Treasury of the United States, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages equal to the sum of the taxes which would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of the Federal Insurance Contributions Act;

(3) Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified in the agreement, but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services is entered into, except that if a political subdivision made reports and payments for social security coverage of its employees to the Internal Revenue Service under the Federal Insurance Contributions Act in the mistaken belief that such action provided coverage for the employees, such agreement shall be effective as of the first day of the first calendar quarter for which such reports were erroneously filed;

(4) All services which constitute employment and are performed in the employ of the state by employees of the state shall be covered by the agreement;

(5) All services which constitute employment, are performed in the employ of a political subdivision of the state, and are covered by a plan which is in conformity with the terms of the agreement and has been approved by the state agency under sections 68-608 to 68-611 shall be covered by the agreement;

(6) As modified, the agreement shall include all services described in either subdivision (4) or (5) of this section or both of such subdivisions and performed by individuals to whom section 218(c)(3)(c) of the Social Security Act is applicable and shall provide that the service of any such individual shall continue to be covered by the agreement in case he or she thereafter becomes eligible to be a member of a retirement system; and

(7) As modified, the agreement shall include all services described in either subdivision (4) or (5) of this section or both of such subdivisions and performed by individuals in positions covered by a retirement system with respect to which the Governor has issued a certificate to the Secretary of Health and Human Services pursuant to subsection (2) of section 68-624.

Source: Laws 1951, c. 297, § 3(1), p. 979; Laws 1955, c. 264, § 3, p. 814; Laws 1969, c. 536, § 2, p. 2183; Laws 1979, LB 576, § 1; Laws 1984, LB 933, § 3; Laws 1990, LB 820, § 3; Laws 2000, LB 1216, § 10; Laws 2010, LB684, § 3.

68-604 Agreement with federal government; instrumentality jointly created with other state.

Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, (1) to enter into an agreement with the Secretary of Health and Human Services whereby the benefits of the federal old age and survivors' insurance system shall be extended to employees of such instrumentality, (2) to require its employees to pay, and for that purpose to deduct from their wages, contributions equal to the amounts which they would be required to pay under section 68-605 if they were covered by an agreement made pursuant to section 68-603, and (3) to make payments to the Secretary of the Treasury of the United States in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such an agreement shall, to the extent practicable, be consistent with the terms and provisions of section 68-603 and other provisions of sections 68-601 to 68-631.

Source: Laws 1951, c. 297, § 3(2), p. 980; Laws 1955, c. 264, § 4, p. 816; Laws 1984, LB 933, § 4; Laws 1990, LB 820, § 4; Laws 2000, LB 1216, § 11; Laws 2010, LB684, § 4.

68-605 Contributions by state employees; amount.

Every employee of the state whose services are covered by an agreement entered into under sections 68-603 and 68-604 shall be required to pay for the period of such coverage, contributions, with respect to wages, as defined in section 68-602, equal to the amount of tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or his or her entry upon such service, after the enactment of sections 68-601 to 68-631.

Source: Laws 1951, c. 297, § 4(1), p. 980; Laws 1955, c. 264, § 5, p. 817; Laws 1987, LB 3, § 1; Laws 2000, LB 1216, § 12; Laws 2010, LB684, § 5.

68-608 Coverage by political subdivisions; plan; modification; approval by state agency.

Unless otherwise provided for by sections 68-601 to 68-631, each political subdivision of the state is hereby authorized to submit for approval by the state agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivision and is hereby further authorized to submit for approval by the state agency any modification or amendment to any then existing plan if such

modification or amendment is necessary or desirable to secure the benefits and exemptions allowable to such political subdivisions thereof or to any employee of the political subdivision in conformity with Title II of the act. Each such plan and any amendment thereof shall be approved by the state agency if it finds that such plan or such plan as amended is in conformity with such requirements as are provided in regulations of the state agency, except that no such plan shall be approved unless: (1) It is in conformity with the requirements of the act and with the agreement entered into under sections 68-603 and 68-604; (2) it provides that all services which constitute employment and are performed in the employ of the political subdivision by employees thereof will be covered by the plan; (3) it specifies the source or sources from which the funds necessary to make the payments required by subsection (1) of section 68-610 and by section 68-611 are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose; (4) it provides for such methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan; (5) it provides that the political subdivision will make such reports in such form and containing such information as the state agency may from time to time require and will comply with such provisions as the state agency or the Secretary of Health and Human Services may from time to time find necessary to assure the correctness and verification of such reports; and (6) it authorizes the state agency to terminate the plan in its entirety, in the discretion of the state agency, if it finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the act.

Source: Laws 1951, c. 297, § 5(1), p. 981; Laws 1955, c. 264, § 6, p. 817; Laws 1969, c. 536, § 3, p. 2184; Laws 1984, LB 933, § 5; Laws 1990, LB 820, § 5; Laws 2000, LB 1216, § 13; Laws 2010, LB684, § 6.

68-610 Coverage by political subdivisions; amount; payment.

(1) Each political subdivision as to which a plan has been approved under sections 68-608 to 68-611 or prepared under section 68-625 shall be required to pay for the period of such coverage, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under sections 68-603 and 68-604.

(2) Each political subdivision required to make payments under section 68-609 is authorized, in consideration of the employee's retention in or entry upon employment after enactment of sections 68-601 to 68-631, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his or her wages not exceeding the amount of tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of the act and to deduct the amount of such contribution from his or her wages as and when paid. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

Source: Laws 1951, c. 297, § 5(3), p. 982; Laws 1955, c. 264, § 8, p. 819; Laws 1990, LB 820, § 6; Laws 2000, LB 1216, § 14; Laws 2010, LB684, § 7.

68-612 Repealed. Laws 2010, LB 684, § 13.

68-613 Repealed. Laws 2010, LB 684, § 13.

68-620 Cities and villages; special levy; addition to levy limitations; contribution to state agency.

Notwithstanding any tax levy limitations contained in any other law or city home rule charter, when any city or village of this state elects to accept the provisions of sections 68-601 to 68-631 relating to old age and survivors insurance and enters into a written agreement with the state agency as provided in such sections, the city or village shall levy a tax, in addition to all other taxes, in order to defray the cost of such city or village in meeting the obligations arising by reason of such written agreement, and the revenue raised by such special levy shall be used for no other purpose.

Source: Laws 1951, c. 296, § 1, p. 976; Laws 1955, c. 264, § 14, p. 821; Laws 1971, LB 667, § 1; Laws 1979, LB 187, § 181; Laws 1990, LB 820, § 10; Laws 2000, LB 1216, § 17; Laws 2010, LB684, § 8.

68-621 Terms, defined.

(1) A referendum group, as referred to in sections 68-621 to 68-630, shall consist of the employees of the state, a single political subdivision of this state, or any instrumentality jointly created by this state and any other state or states, the employees of which are or may be members of a retirement system covering such employees, except that: (a) The employees of the University of Nebraska shall constitute a referendum group; (b) the employees of a Class V school district shall constitute a referendum group; (c) all employees of the State of Nebraska who are or may be members of the School Employees Retirement System of the State of Nebraska, including employees of institutions operated by the Board of Trustees of the Nebraska State Colleges, employees of institutions operated by the Department of Correctional Services and the Department of Health and Human Services, and employees subordinate to the State Board of Education, shall constitute a referendum group; and (d) all employees of school districts of the State of Nebraska, county superintendents, and county school administrators, who are or may be members of the School Employees Retirement System of the State of Nebraska, shall constitute a single referendum group.

(2) The managing authority of a political subdivision or educational institution shall be the board, committee, or council having general authority over a political subdivision, university, college, or school district whose employees constitute or are included in a referendum group; the managing authority of the state shall be the Governor; and insofar as sections 68-601 to 68-631 may be applicable to county superintendents and county school administrators, managing authority shall mean the board of county commissioners or county supervisors of the county in which the county superintendent was elected or with which the county school administrator contracted.

(3) Eligible employees, as referred to in sections 68-621 to 68-630, shall mean those employees of the state or any political subdivision thereof who at or during the time of voting in a referendum as herein provided are in positions covered by a retirement system, are members of such retirement system, and were in such positions at the time of giving of the notice of such referendum, as herein required, except that no such employee shall be considered an eligible

employee if at the time of such voting such employee is in a position to which the state agreement applies or if such employee is in service in a police officer or firefighter position.

(4) State agreement, as referred to in sections 68-621 to 68-630, shall mean the agreement between the State of Nebraska and the designated officer of the United States of America entered into pursuant to section 68-603.

Source: Laws 1955, c. 264, § 15, p. 821; Laws 1969, c. 537, § 1, p. 2187; Laws 1973, LB 563, § 6; Laws 1988, LB 802, § 6; Laws 1996, LB 1044, § 297; Laws 1999, LB 272, § 20; Laws 2000, LB 1216, § 18; Laws 2010, LB684, § 9; Laws 2011, LB509, § 13.

68-622 Referendum; persons eligible to vote; Governor; powers.

(1) All employees of the State of Nebraska or any political subdivision thereof or any instrumentality jointly created by this state and any other state or states who have heretofore been excluded from receiving or qualifying for benefits under Title II of the Social Security Act because of membership in a retirement system may, when sections 68-621 to 68-630 have been complied with, vote at a referendum upon the question of whether service in positions covered by such retirement system should be excluded from or included under the state agreement, except that if such a referendum has been conducted and certified in accordance with section 218(d)(3) of the Social Security Act, as amended in 1954, prior to May 18, 1955, then no further referendum shall be required, but this shall not prohibit the conducting of such further referendum.

(2) The Governor may authorize a referendum and designate any agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under sections 68-601 to 68-631.

Source: Laws 1955, c. 264, § 16, p. 822; Laws 1990, LB 820, § 11; Laws 2000, LB 1216, § 19; Laws 2010, LB684, § 10.

68-631 Metropolitan utilities district; social security; employees; separate group; referendum; effect.

Sections 68-601 to 68-631 and any amendments thereto shall, except as otherwise provided in this section, be applicable to metropolitan utilities districts and employees and appointees of metropolitan utilities districts. The state agency contemplated in such sections is authorized to enter, on behalf of the State of Nebraska, into an agreement with any authorized agent of the United States Government for the purpose of extending the benefits of the Federal Old Age and Survivors' Insurance system, as amended by Public Law 761, approved September 1, 1954, to the appointees and employees of each metropolitan utilities district, and all of the appointees and employees covered by a contributory retirement plan are hereby declared to be a separate group for the purposes of referendum and subsequent coverage. Metropolitan utilities districts are hereby declared to be political subdivisions as defined in section 68-602, and the Governor is authorized to appoint the board of directors of any metropolitan utilities district as the agency designated by him or her to supervise any referendum required to be conducted under the Social Security

Act and is authorized to make any certifications required by the act to be made to the Secretary of Health and Human Services.

Source: Laws 1955, c. 25, § 2, p. 118; Laws 1984, LB 933, § 8; Laws 1990, LB 820, § 12; Laws 2000, LB 1216, § 20; Laws 2010, LB684, § 11.

ARTICLE 7 DEPARTMENT DUTIES

Section

68-721. Prenatal services; review of case authorized.

68-721 Prenatal services; review of case authorized.

A pregnant United States citizen and Nebraska resident with an income at or below one hundred eighty-five percent of the federal poverty level who is subject to a child support enforcement sanction may ask for her case to be reviewed by the chief executive officer of the Department of Health and Human Services to obtain prenatal services from state-only funds. If the chief executive officer, upon review of the circumstances of the case, determines, in his or her discretion, that circumstances relating to domestic violence warrant an exception to the existing rules and regulations governing medicaid coverage and sanctions, he or she may authorize prenatal services to be paid from state general funds. Prenatal services provided under this section shall not include abortion counseling, referral for abortion, or funding for abortion.

This section terminates on June 30, 2011.

Source: Laws 2010, LB507, § 1.

Termination date June 30, 2011.

ARTICLE 9 MEDICAL ASSISTANCE ACT

Section

68-901. Medical Assistance Act; act, how cited.

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Section

- 68-969. Amendment to medicaid state plan or waiver; children eligible for medicaid and CHIP; treatment for pregnant women; department; duties.
- 68-970. Nebraska Regional Poison Center; legislative findings.
- 68-971. Amendment to medicaid state plan or waiver; Nebraska Regional Poison Center; payments; use; department; duties; University of Nebraska Medical Center; report.
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- 68-973. Improper payments; postpayment reimbursement; legislative findings.
- 68-974. Recovery audit contractors; contracts; contents; health insurance premium assistance payment program; contract; department; powers and duties; report.

68-901 Medical Assistance Act; act, how cited.

Sections 68-901 to 68-974 shall be known and may be cited as the Medical Assistance Act.

Source: Laws 2006, LB 1248, § 1; Laws 2008, LB830, § 1; Laws 2009, LB27, § 1; Laws 2009, LB288, § 18; Laws 2009, LB342, § 1; Laws 2009, LB396, § 1; Laws 2010, LB1106, § 1; Laws 2011, LB525, § 1; Laws 2012, LB541, § 1; Laws 2012, LB599, § 2.

68-906 Medical assistance; state accepts federal provisions.

For purposes of paying medical assistance under the Medical Assistance Act and sections 68-1002 and 68-1006, the State of Nebraska accepts and assents to all applicable provisions of Title XIX and Title XXI of the federal Social Security Act. Any reference in the Medical Assistance Act to the federal Social Security Act or other acts or sections of federal law shall be to such federal acts or sections as they existed on January 1, 2010.

Source: Laws 1965, c. 397, § 6, p. 1278; Laws 1993, LB 808, § 2; Laws 1996, LB 1044, § 324; Laws 1998, LB 1063, § 7; Laws 2000, LB 1115, § 10; Laws 2005, LB 301, § 4; R.S.Supp.,2005, § 68-1021; Laws 2006, LB 1248, § 6; Laws 2007, LB185, § 1; Laws 2008, LB797, § 4; Laws 2009, LB288, § 19; Laws 2010, LB849, § 13.

68-907 Terms, defined.

For purposes of the Medical Assistance Act:

(1) Committee means the Health and Human Services Committee of the Legislature;

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

(3) Medicaid Reform Plan means the Medicaid Reform Plan submitted on December 1, 2005, pursuant to the Medicaid Reform Act enacted pursuant to Laws 2005, LB 709;

(4) Medicaid state plan means the comprehensive written document, developed and amended by the department and approved by the federal Centers for Medicare and Medicaid Services, which describes the nature and scope of the medical assistance program and provides assurances that the department will administer the program in compliance with federal requirements;

(5) Provider means a person providing health care or related services under the medical assistance program;

(6) School-based health center means a health center that:

- (a) Is located in or is adjacent to a school facility;
 - (b) Is organized through school, school district, learning community, community, and provider relationships;
 - (c) Is administered by a sponsoring facility;
 - (d) Provides school-based health services onsite during school hours to children and adolescents by health care professionals in accordance with state and local laws, rules, and regulations, established standards, and community practice;
 - (e) Does not perform abortion services or refer or counsel for abortion services and does not dispense, prescribe, or counsel for contraceptive drugs or devices; and
 - (f) Does not serve as a child's or an adolescent's medical or dental home but augments and supports services provided by the medical or dental home;
- (7) School-based health services may include any combination of the following as determined in partnership with a sponsoring facility, the school district, and the community:
- (a) Medical health;
 - (b) Behavioral and mental health;
 - (c) Preventive health; and
 - (d) Oral health;
- (8) Sponsoring facility means:
- (a) A hospital;
 - (b) A public health department as defined in section 71-1626;
 - (c) A federally qualified health center as defined in section 1905(l)(2)(B) of the federal Social Security Act, 42 U.S.C. 1396d(l)(2)(B), as such act and section existed on January 1, 2010;
 - (d) A nonprofit health care entity whose mission is to provide access to comprehensive primary health care services;
 - (e) A school or school district; or
 - (f) A program administered by the Indian Health Service or the federal Bureau of Indian Affairs or operated by an Indian tribe or tribal organization under the federal Indian Self-Determination and Education Assistance Act, or an urban Indian program under Title V of the federal Indian Health Care Improvement Act, as such acts existed on January 1, 2010; and
- (9) Waiver means the waiver of applicability to the state of one or more provisions of federal law relating to the medical assistance program based on an application by the department and approval of such application by the federal Centers for Medicare and Medicaid Services.

Source: Laws 2006, LB 1248, § 7; Laws 2007, LB296, § 246; Laws 2010, LB1106, § 2.

68-908 Department; powers and duties.

- (1) The department shall administer the medical assistance program.
- (2) The department may (a) enter into contracts and interagency agreements, (b) adopt and promulgate rules and regulations, (c) adopt fee schedules, (d) apply for and implement waivers and managed care plans for services for

eligible recipients, including services under the Nebraska Behavioral Health Services Act, and (e) perform such other activities as necessary and appropriate to carry out its duties under the Medical Assistance Act. A covered item or service as described in section 68-911 that is furnished through a school-based health center, furnished by a provider, and furnished under a managed care plan pursuant to a waiver does not require prior consultation or referral by a patient's primary care physician to be covered. Any federally qualified health center providing services as a sponsoring facility of a school-based health center shall be reimbursed for such services provided at a school-based health center at the federally qualified health center reimbursement rate.

(3) The department shall maintain the confidentiality of information regarding applicants for or recipients of medical assistance and such information shall only be used for purposes related to administration of the medical assistance program and the provision of such assistance or as otherwise permitted by federal law.

(4)(a) The department shall prepare an annual summary and analysis of the medical assistance program for legislative and public review, including, but not limited to, a description of eligible recipients, covered services, provider reimbursement, program trends and projections, program budget and expenditures, the status of implementation of the Medicaid Reform Plan, and recommendations for program changes.

(b) The department shall provide a draft report of such summary and analysis to the Medicaid Reform Council no later than September 15 of each year. The council shall conduct a public meeting no later than October 1 of each year to discuss and receive public comment regarding such report. The council shall provide any comments and recommendations regarding such report in writing to the department no later than November 1 of each year. The department shall submit a final report of such summary and analysis to the Governor, the Legislature, and the council no later than December 1 of each year. The report submitted to the Legislature shall be submitted electronically. Such final report shall include a response to each written recommendation provided by the council.

Source: Laws 1965, c. 397, § 8, p. 1278; Laws 1967, c. 413, § 2, p. 1278; Laws 1982, LB 522, § 43; Laws 1996, LB 1044, § 325; R.S.1943, (2003), § 68-1023; Laws 2006, LB 1248, § 8; Laws 2007, LB296, § 247; Laws 2009, LB288, § 20; Laws 2010, LB1106, § 3; Laws 2012, LB782, § 91; Laws 2012, LB1158, § 1.

Cross References

Nebraska Behavioral Health Services Act, see section 71-801.

68-909 Existing contracts, agreements, rules, regulations, plan, and waivers; how treated; report required; exception; Medicaid Reform Council; department; powers and duties.

(1) All contracts, agreements, rules, and regulations relating to the medical assistance program as entered into or adopted and promulgated by the department prior to July 1, 2006, and all provisions of the medicaid state plan and waivers adopted by the department prior to July 1, 2006, shall remain in effect until revised, amended, repealed, or nullified pursuant to law.

(2) Prior to the adoption and promulgation of proposed rules and regulations under section 68-912 or relating to the implementation of medicaid state plan

amendments or waivers, the department shall provide a report to the Governor, the Legislature, and the Medicaid Reform Council no later than December 1 before the next regular session of the Legislature summarizing the purpose and content of such proposed rules and regulations and the projected impact of such proposed rules and regulations on recipients of medical assistance and medical assistance expenditures. The report submitted to the Legislature shall be submitted electronically. Any changes in medicaid copayments in fiscal year 2011-12 are exempt from the reporting requirement of this subsection and the requirements of section 68-912.

(3) The Medicaid Reform Council, no later than thirty days after the date of receipt of any report under subsection (2) of this section, may conduct a public meeting to receive public comment regarding such report. The council shall promptly provide any comments and recommendations regarding such report in writing to the department. Such comments and recommendations shall be advisory only and shall not be binding on the department, but the department shall promptly provide a written response to such comments or recommendations to the council.

(4) The department shall monitor and shall periodically, as necessary, but no less than biennially, report to the Governor, the Legislature, and the Medicaid Reform Council on the implementation of rules and regulations, medicaid state plan amendments, and waivers adopted under the Medical Assistance Act and the effect of such rules and regulations, amendments, or waivers on eligible recipients of medical assistance and medical assistance expenditures. The report submitted to the Legislature shall be submitted electronically.

Source: Laws 2006, LB 1248, § 9; Laws 2008, LB928, § 15; Laws 2011, LB468, § 1; Laws 2012, LB782, § 92.

68-911 Medical assistance; mandated and optional coverage; department; submit state plan amendment or waiver.

(1) Medical assistance shall include coverage for health care and related services as required under Title XIX of the federal Social Security Act, including, but not limited to:

- (a) Inpatient and outpatient hospital services;
- (b) Laboratory and X-ray services;
- (c) Nursing facility services;
- (d) Home health services;
- (e) Nursing services;
- (f) Clinic services;
- (g) Physician services;
- (h) Medical and surgical services of a dentist;
- (i) Nurse practitioner services;
- (j) Nurse midwife services;
- (k) Pregnancy-related services;
- (l) Medical supplies;
- (m) Mental health and substance abuse services; and

(n) Early and periodic screening and diagnosis and treatment services for children which shall include both physical and behavioral health screening, diagnosis, and treatment services.

(2) In addition to coverage otherwise required under this section, medical assistance may include coverage for health care and related services as permitted but not required under Title XIX of the federal Social Security Act, including, but not limited to:

- (a) Prescribed drugs;
- (b) Intermediate care facilities for persons with developmental disabilities;
- (c) Home and community-based services for aged persons and persons with disabilities;
- (d) Dental services;
- (e) Rehabilitation services;
- (f) Personal care services;
- (g) Durable medical equipment;
- (h) Medical transportation services;
- (i) Vision-related services;
- (j) Speech therapy services;
- (k) Physical therapy services;
- (l) Chiropractic services;
- (m) Occupational therapy services;
- (n) Optometric services;
- (o) Podiatric services;
- (p) Hospice services;
- (q) Mental health and substance abuse services;
- (r) Hearing screening services for newborn and infant children; and
- (s) Administrative expenses related to administrative activities, including outreach services, provided by school districts and educational service units to students who are eligible or potentially eligible for medical assistance.

(3) No later than July 1, 2009, the department shall submit a state plan amendment or waiver to the federal Centers for Medicare and Medicaid Services to provide coverage under the medical assistance program for community-based secure residential and subacute behavioral health services for all eligible recipients, without regard to whether the recipient has been ordered by a mental health board under the Nebraska Mental Health Commitment Act to receive such services.

(4) On or before October 1, 2014, the department, after consultation with the State Department of Education, shall submit a state plan amendment to the federal Centers for Medicare and Medicaid Services, as necessary, to provide that the following are direct reimbursable services when provided by school districts as part of an individualized education program or an individualized family service plan: Early and periodic screening, diagnosis, and treatment services for children; medical transportation services; mental health services; nursing services; occupational therapy services; personal care services; physical therapy services; rehabilitation services; speech therapy and other services for

individuals with speech, hearing, or language disorders; and vision-related services.

Source: Laws 1965, c. 397, § 4, p. 1277; Laws 1967, c. 413, § 1, p. 1278; Laws 1969, c. 542, § 1, p. 2193; Laws 1993, LB 804, § 1; Laws 1993, LB 808, § 1; Laws 1996, LB 1044, § 315; Laws 1998, LB 1063, § 5; Laws 1998, LB 1073, § 60; Laws 2002, Second Spec. Sess., LB 8, § 1; R.S.1943, (2003), § 68-1019; Laws 2006, LB 1248, § 11; Laws 2009, LB603, § 1; Laws 2013, LB23, § 12; Laws 2013, LB556, § 5; Laws 2014, LB276, § 4.
Effective date July 18, 2014.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

68-912 Limits on goods and services; considerations; procedure.

(1) The department may establish (a) premiums, copayments, and deductibles for goods and services provided under the medical assistance program, (b) limits on the amount, duration, and scope of goods and services that recipients may receive under the medical assistance program subject to subsection (5) of this section, and (c) requirements for recipients of medical assistance as a necessary condition for the continued receipt of such assistance, including, but not limited to, active participation in care coordination and appropriate disease management programs and activities.

(2) In establishing and limiting coverage for services under the medical assistance program, the department shall consider (a) the effect of such coverage and limitations on recipients of medical assistance and medical assistance expenditures, (b) the public policy in section 68-905, (c) the experience and outcomes of other states, (d) the nature and scope of benchmark or benchmark-equivalent health insurance coverage as recognized under federal law, and (e) other relevant factors as determined by the department.

(3) Coverage for mandatory and optional services and limitations on covered services as established by the department prior to July 1, 2006, shall remain in effect until revised, amended, repealed, or nullified pursuant to law. Any proposed reduction or expansion of services or limitation of covered services by the department under this section shall be subject to the reporting and review requirements of section 68-909.

(4) Except as otherwise provided in this subsection, proposed rules and regulations under this section relating to the establishment of premiums, copayments, or deductibles for eligible recipients or limits on the amount, duration, or scope of covered services for eligible recipients shall not become effective until the conclusion of the earliest regular session of the Legislature in which there has been a reasonable opportunity for legislative consideration of such rules and regulations. This subsection does not apply to rules and regulations that are (a) required by federal or state law, (b) related to a waiver in which recipient participation is voluntary, or (c) proposed due to a loss of federal matching funds relating to a particular covered service or eligibility category. Legislative consideration includes, but is not limited to, the introduction of a legislative bill, a legislative resolution, or an amendment to pending legislation relating to such rules and regulations.

(5) Any limitation on the amount, duration, or scope of goods and services that recipients may receive under the medical assistance program shall give full

and deliberate consideration to the role of home health services from private duty nurses in meeting the needs of a disabled family member or disabled person.

Source: Laws 1993, LB 804, § 2; Laws 1996, LB 1044, § 316; R.S.1943, (2003), § 68-1019.01; Laws 2006, LB 1248, § 12; Laws 2012, LB1122, § 1.

68-914 Application for medical assistance; form; department; decision; appeal.

(1) An applicant for medical assistance shall file an application with the department in a manner and form prescribed by the department. The department shall process each application to determine whether the applicant is eligible for medical assistance. The department shall provide a determination of eligibility for medical assistance in a timely manner in compliance with 42 C.F.R. 435.911, including, but not limited to, a timely determination of eligibility for coverage of an emergency medical condition, such as labor and delivery.

(2) The department shall notify an applicant for or recipient of medical assistance of any decision of the department to deny or discontinue eligibility or to deny or modify medical assistance. Decisions of the department, including the failure of the department to act with reasonable promptness, may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2006, LB 1248, § 14; Laws 2011, LB494, § 1.

Cross References

Administrative Procedure Act, see section 84-920.

68-915 Eligibility.

The following persons shall be eligible for medical assistance:

- (1) Dependent children as defined in section 43-504;
- (2) Aged, blind, and disabled persons as defined in sections 68-1002 to 68-1005;
- (3) Children under nineteen years of age who are eligible under section 1905(a)(i) of the federal Social Security Act;
- (4) Persons who are presumptively eligible as allowed under sections 1920 and 1920B of the federal Social Security Act;
- (5) Children under nineteen years of age with a family income equal to or less than two hundred percent of the Office of Management and Budget income poverty guideline, as allowed under Title XIX and Title XXI of the federal Social Security Act, without regard to resources, and pregnant women with a family income equal to or less than one hundred eighty-five percent of the Office of Management and Budget income poverty guideline, as allowed under Title XIX and Title XXI of the federal Social Security Act, without regard to resources. Children described in this subdivision and subdivision (6) of this section shall remain eligible for six consecutive months from the date of initial eligibility prior to redetermination of eligibility. The department may review eligibility monthly thereafter pursuant to rules and regulations adopted and promulgated by the department. The department may determine upon such review that a

child is ineligible for medical assistance if such child no longer meets eligibility standards established by the department;

(6) For purposes of Title XIX of the federal Social Security Act as provided in subdivision (5) of this section, children with a family income as follows:

(a) Equal to or less than one hundred fifty percent of the Office of Management and Budget income poverty guideline with eligible children one year of age or younger;

(b) Equal to or less than one hundred thirty-three percent of the Office of Management and Budget income poverty guideline with eligible children over one year of age and under six years of age; or

(c) Equal to or less than one hundred percent of the Office of Management and Budget income poverty guideline with eligible children six years of age or older and less than nineteen years of age;

(7) Persons who are medically needy caretaker relatives as allowed under 42 U.S.C. 1396d(a)(ii);

(8) As allowed under 42 U.S.C. 1396a(a)(10)(A)(ii), disabled persons as defined in section 68-1005 with a family income of less than two hundred fifty percent of the Office of Management and Budget income poverty guideline and who, but for earnings in excess of the limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving federal Supplemental Security Income. The department shall apply for a waiver to disregard any unearned income that is contingent upon a trial work period in applying the Supplemental Security Income standard. Such disabled persons shall be subject to payment of premiums as a percentage of family income beginning at not less than two hundred percent of the Office of Management and Budget income poverty guideline. Such premiums shall be graduated based on family income and shall not be less than two percent or more than ten percent of family income;

(9) As allowed under 42 U.S.C. 1396a(a)(10)(A)(ii), persons who:

(a) Have been screened for breast and cervical cancer under the Centers for Disease Control and Prevention breast and cervical cancer early detection program established under Title XV of the federal Public Health Service Act, 42 U.S.C. 300k et seq., in accordance with the requirements of section 1504 of such act, 42 U.S.C. 300n, and who need treatment for breast or cervical cancer, including precancerous and cancerous conditions of the breast or cervix;

(b) Are not otherwise covered under creditable coverage as defined in section 2701(c) of the federal Public Health Service Act, 42 U.S.C. 300gg(c);

(c) Have not attained sixty-five years of age; and

(d) Are not eligible for medical assistance under any mandatory categorically needy eligibility group; and

(10) Persons eligible for services described in subsection (3) of section 68-972.

Except as provided in section 68-972, eligibility shall be determined under this section using an income budgetary methodology that determines children's eligibility at no greater than two hundred percent of the Office of Management and Budget income poverty guideline and adult eligibility using adult income standards no greater than the applicable categorical eligibility standards established pursuant to state or federal law. The department shall determine eligibili-

ty under this section pursuant to such income budgetary methodology and subdivision (1)(q) of section 68-1713.

Source: Laws 1965, c. 397, § 5, p. 1278; Laws 1984, LB 1127, § 4; Laws 1988, LB 229, § 1; Laws 1995, LB 455, § 6; Laws 1996, LB 1044, § 323; Laws 1998, LB 1063, § 6; Laws 1999, LB 594, § 34; Laws 2001, LB 677, § 1; Laws 2002, Second Spec. Sess., LB 8, § 2; Laws 2003, LB 411, § 2; Laws 2005, LB 301, § 3; R.S.Supp.,2005, § 68-1020; Laws 2006, LB 1248, § 15; Laws 2007, LB296, § 249; Laws 2007, LB351, § 3; Laws 2009, LB603, § 2; Laws 2012, LB599, § 3.

68-919 Medical assistance recipient; liability; when; claim; procedure; department; powers.

(1) The recipient of medical assistance under the medical assistance program shall be indebted to the department for the total amount paid for medical assistance on behalf of the recipient if:

(a) The recipient was fifty-five years of age or older at the time the medical assistance was provided; or

(b) The recipient resided in a medical institution and, at the time of institutionalization or application for medical assistance, whichever is later, the department determines that the recipient could not have reasonably been expected to be discharged and resume living at home. For purposes of this section, medical institution means a nursing facility, an intermediate care facility for persons with developmental disabilities, or an inpatient hospital.

(2) The debt accruing under subsection (1) of this section arises during the life of the recipient but shall be held in abeyance until the death of the recipient. Any such debt to the department that exists when the recipient dies shall be recovered only after the death of the recipient's spouse, if any, and only when the recipient is not survived by a child who either is under twenty-one years of age or is blind or totally and permanently disabled as defined by the Supplemental Security Income criteria.

(3) The debt shall include the total amount of medical assistance provided when the recipient was fifty-five years of age or older or during a period of institutionalization as described in subsection (1) of this section and shall not include interest.

(4) In any probate proceedings in which the department has filed a claim under this section, no additional evidence of foundation shall be required for the admission of the department's payment record supporting its claim if the payment record bears the seal of the department, is certified as a true copy, and bears the signature of an authorized representative of the department.

(5) The department may waive or compromise its claim, in whole or in part, if the department determines that enforcement of the claim would not be in the best interests of the state or would result in undue hardship as provided in rules and regulations of the department.

Source: Laws 1994, LB 1224, § 39; Laws 1996, LB 1044, § 334; Laws 2001, LB 257, § 1; Laws 2004, LB 1005, § 7; R.S.Supp.,2004, § 68-1036.02; Laws 2006, LB 1248, § 19; Laws 2007, LB185, § 2; Laws 2013, LB23, § 13.

68-921 Entitlement of spouse; terms, defined.

For purposes of sections 68-921 to 68-925:

(1) Assets means property which is not exempt from consideration in determining eligibility for medical assistance under rules and regulations adopted and promulgated under section 68-922;

(2) Community spouse monthly income allowance means the amount of income determined by the department in accordance with section 1924 of the federal Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5;

(3) Community spouse resource allowance means the amount of assets determined in accordance with section 1924 of the federal Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5. For purposes of 42 U.S.C. 1396r-5(f)(2)(A)(i), the amount specified by the state shall be twelve thousand dollars;

(4) Home and community-based services means services furnished under home and community-based waivers as defined in Title XIX of the federal Social Security Act, as amended, 42 U.S.C. 1396;

(5) Qualified applicant means a person (a) who applies for medical assistance on or after July 9, 1988, (b) who is under care in a state-licensed hospital, a nursing facility, an intermediate care facility for persons with developmental disabilities, an assisted-living facility, or a center for the developmentally disabled, as such terms are defined in the Health Care Facility Licensure Act, or an adult family home certified by the department or is receiving home and community-based services, and (c) whose spouse is not under such care or receiving such services and is not applying for or receiving medical assistance;

(6) Qualified recipient means a person (a) who has applied for medical assistance before July 9, 1988, and is eligible for such assistance, (b) who is under care in a facility certified to receive medical assistance funds or is receiving home and community-based services, and (c) whose spouse is not under such care or receiving such services and is not applying for or receiving medical assistance; and

(7) Spouse means the spouse of a qualified applicant or qualified recipient.

Source: Laws 1988, LB 419, § 1; Laws 1989, LB 362, § 11; Laws 1991, LB 244, § 1; Laws 1996, LB 1044, § 336; Laws 1997, LB 608, § 4; Laws 2000, LB 819, § 81; R.S.1943, (2003), § 68-1038; Laws 2006, LB 1248, § 21; Laws 2007, LB185, § 3; Laws 2007, LB296, § 250; Laws 2013, LB23, § 14.

Cross References

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

68-935 Terms, defined.

For purposes of the False Medicaid Claims Act:

(1) Attorney General means the Attorney General, the office of the Attorney General, or a designee of the Attorney General;

(2) Claim means any request or demand, whether under a contract or otherwise, for money or property, and whether or not the state has title to the money or property, that:

(a) Is presented to an officer, employee, or agent of the state; or

(b) Is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the state's behalf or to advance a state program or interest, and if the state:

(i) Provides or has provided any portion of the money or property requested or demanded; or

(ii) Will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded;

(3) Good or service includes (a) any particular item, device, medical supply, or service claimed to have been provided to a recipient and listed in an itemized claim for payment and (b) any entry in the cost report, books of account, or other documents supporting such good or service;

(4)(a) Knowing and knowingly means that a person, with respect to information:

(i) Has actual knowledge of the information;

(ii) Acts in deliberate ignorance of the truth or falsity of the information; or

(iii) Acts in reckless disregard of the truth or falsity of the information.

(b) Acts committed in a knowing manner or committed knowingly shall not require proof of a specific intent to defraud;

(5) Material means having a natural tendency to influence or be capable of influencing the payment or receipt of money or property;

(6) Obligation means an established duty, whether or not fixed, arising from (a) an express or implied contractual, grantor-grantee, or licensor-licensee relationship, (b) a fee-based or similar relationship, (c) statute or rule or regulation, or (d) the retention of any overpayment;

(7) Person means any body politic or corporate, society, community, the public generally, individual, partnership, limited liability company, joint-stock company, or association; and

(8) Recipient means an individual who is eligible to receive goods or services for which payment may be made under the medical assistance program.

Source: Laws 1996, LB 1155, § 68; R.S.1943, (2003), § 68-1037.02; Laws 2004, LB 1084, § 2; R.S.Supp.,2004, § 68-1074; Laws 2006, LB 1248, § 35; Laws 2013, LB277, § 1.

68-936 Presentation of false medicaid claim; civil liability; violation of act; civil penalty; damages; costs and attorney's fees.

(1) A person presents a false medicaid claim and is subject to civil liability if such person:

(a) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(b) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(c) Conspires to commit a violation of the False Medicaid Claims Act;

(d) Has possession, custody, or control of property or money used, or to be used, by the state and knowingly delivers, or causes to be delivered, less than all of the money or property;

(e) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state and, intending to defraud the state, makes or delivers the receipt knowing that the information on the receipt is not true;

(f) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the state who may not lawfully sell or pledge such property; or

(g) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state or knowingly conceals, avoids, or decreases an obligation to pay or transmit money or property to the state.

(2) A person who commits a violation of the False Medicaid Claims Act is subject to, in addition to any other remedies that may be prescribed by law, a civil penalty of not more than ten thousand dollars. In addition to any civil penalty, any such person may be subject to damages in the amount of three times the amount of the false claim because of the act of that person.

(3) If the state is the prevailing party in an action under the False Medicaid Claims Act, the defendant, in addition to penalties and damages, shall pay the state's costs and attorney's fees for the civil action brought to recover penalties or damages under the act.

(4) Liability under this section is joint and several for any act committed by two or more persons.

Source: Laws 1996, LB 1155, § 69; Laws 1997, LB 307, § 110; R.S.1943, (2003), § 68-1037.03; Laws 2004, LB 1084, § 3; R.S.Supp.,2004, § 68-1075; Laws 2006, LB 1248, § 36; Laws 2013, LB277, § 2.

68-959 Medical home pilot program; designation; division; duties; evaluation; report.

(1) No later than January 1, 2012, the division shall design and implement a medical home pilot program, in consultation with the Medical Home Advisory Council, in one or more geographic regions of the state to provide access to medical homes for patients. The division shall apply for any available federal or other funds for the program. The division shall establish necessary and appropriate reimbursement policies and incentives under such program to accomplish the purposes of the Medical Home Pilot Program Act. The reimbursement policies:

(a) Shall require the provision of a medical home for clients;

(b) Shall be designed to increase the availability of primary health care services to clients;

(c) May provide an increased reimbursement rate to providers who provide primary health care services to clients outside of regular business hours or on weekends; and

(d) May provide a postevaluation incentive payment.

(2) No later than June 1, 2014, the division shall evaluate the medical home pilot program and report the results of such evaluation to the Governor and the Health and Human Services Committee of the Legislature. The report submitted to the committee shall be submitted electronically. Such report shall include an evaluation of health outcomes and cost savings achieved, recommendations for improvement, recommendations regarding continuation and expansion of

the program, and such other information as deemed necessary by the division or requested by the committee.

Source: Laws 2009, LB396, § 4; Laws 2012, LB782, § 93.
Termination date June 30, 2014.

68-965 Autism Treatment Program Cash Fund; created; use; investment.

(1) The Autism Treatment Program Cash Fund is created. The fund shall include revenue received from gifts, grants, bequests, donations, other similar donation arrangements, or other contributions from public or private sources. The department shall administer the fund. The fund shall be used as the state's matching share for the waiver established under section 68-966 and for expenses incurred in the administration of the Autism Treatment Program. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The program shall utilize private funds deposited in the fund. No donations from a provider of services under Title XIX of the federal Social Security Act shall be deposited into the fund.

Source: Laws 2007, LB482, § 4; R.S.1943, (2008), § 85-1,141; Laws 2009, LB27, § 5; Laws 2012, LB969, § 8.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

68-968 School-based health centers; School Health Center Advisory Council; members.

(1) To ensure that the interests of the school district, community, and health care provider are reflected within the policies, procedures, and scope of services of school-based health centers, each school district shall establish a School Health Center Advisory Council for each school in the district hosting a school-based health center.

(2) The School Health Center Advisory Council shall include:

(a) At least one representative of the school administration or school district administration;

(b) At least one representative of the sponsoring facility; and

(c) At least one parent recommended by a school administrator or school district administrator and approved by a majority vote of the school board. Any parent serving on a School Health Center Advisory Council shall have at least one child enrolled in the school through which the school-based health center is organized.

(3) If another institution or organization sponsors the school-based health center, at least one representative of each sponsoring institution or organization shall be included on the School Health Center Advisory Council.

(4) School Health Center Advisory Councils may also include students enrolled in the school district through which the school-based health center is organized. Any such students must be appointed by a school administrator or school district administrator.

Source: Laws 2010, LB1106, § 4.

68-969 Amendment to medicaid state plan or waiver; children eligible for medicaid and CHIP; treatment for pregnant women; department; duties.

(1) On or before July 1, 2010, the department shall submit an application to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services, amending the medicaid state plan or seeking a waiver thereto to provide for utilization of money to allow for payments for treatment for children who are lawfully residing in the United States and who are otherwise eligible for medicaid and CHIP pursuant to the federal Children's Health Insurance Program Reauthorization Act of 2009, Public Law 111-3, as such act existed on January 1, 2010, and for treatment for pregnant women who are lawfully residing in the United States and who are otherwise eligible for medicaid pursuant to the federal Children's Health Insurance Program Reauthorization Act of 2009, Public Law 111-3, as such act existed on January 1, 2010.

(2) For purposes of this section, (a) CHIP means the Children's Health Insurance Program established pursuant to 42 U.S.C. 1397aa et seq., and (b) medicaid means the program for medical assistance established under 42 U.S.C. 1396 et seq., as such sections existed on January 1, 2010.

Source: Laws 2010, LB1106, § 5.

68-970 Nebraska Regional Poison Center; legislative findings.

The Legislature finds that:

(1) The Nebraska Regional Poison Center funded through the University of Nebraska Medical Center Cash Fund provides a valuable service to Nebraska;

(2) The center receives over seventeen thousand calls annually, seventy-two percent of the calls involve children, and over twenty-seven percent of the calls relate to children in families whose annual household income is at or below two hundred percent of the federal poverty level;

(3) The operation of the center has resulted in over ninety percent of the calls regarding a child under six years of age being handled in a manner such that the child was able to remain at home and the child did not have to visit an emergency room or use 911 or emergency medical services; and

(4) The operation of the center results in a cost savings of one hundred seventy-five dollars per call in 1996 dollars.

Source: Laws 2011, LB525, § 2.

68-971 Amendment to medicaid state plan or waiver; Nebraska Regional Poison Center; payments; use; department; duties; University of Nebraska Medical Center; report.

(1) On or before January 1, 2012, the department shall submit an application to the federal Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services to amend the medicaid state plan or seek a waiver to provide for utilization of the unused administrative cap to allow for payments to the Nebraska Regional Poison Center funded through the University of Nebraska Medical Center Cash Fund to help offset the cost for treatment of children who are eligible for assistance under the medical assistance program and the Children's Health Insurance Program established pursuant to 42 U.S.C. 1397aa et seq., pursuant to the federal Children's Health

Insurance Program Reauthorization Act of 2009, Public Law 111-3, as such act existed on January 1, 2010.

(2) Upon approval of the amendment to the medicaid state plan or the granting of the waiver, the University of Nebraska Medical Center shall transfer an amount, not to exceed two hundred fifty thousand dollars, to the Health and Human Services Cash Fund for the Nebraska Department of Health and Human Services to meet the state match to maximize the use of the unused administrative cap money. At the time the department receives the transferred amount or any portion thereof and the corollary federal funds, the department shall transfer the combined funds to the University of Nebraska Medical Center Cash Fund for operation of the Nebraska Regional Poison Center. If no amendment is approved nor waiver granted or if less than two hundred fifty thousand dollars is needed for the match, then the University of Nebraska Medical Center may use the remaining state appropriation for the operation of the Nebraska Regional Poison Center.

(3) The University of Nebraska Medical Center shall report electronically to the Legislative Fiscal Analyst on or before October 1 of every year the amount transferred to the department in the prior fiscal year and the amount of matching funds received under this section for the Nebraska Regional Poison Center in the prior fiscal year.

Source: Laws 2011, LB525, § 3; Laws 2012, LB782, § 94.

68-972 Prenatal care; legislative findings; creation of separate program; benefits provided; department; submit state plan amendment or waiver; eligibility.

(1) The Legislature finds that:

(a) Title XXI of the federal Social Security Act, as amended, and the rules and regulations promulgated pursuant thereto, authorize the State Children's Health Insurance Program to assist state efforts to initiate and expand provisions of child health assistance to uninsured, low-income children;

(b) As defined in Title XXI of the federal Social Security Act, as amended, and the rules and regulations promulgated pursuant thereto, child means an individual under the age of nineteen years, including any period of time from conception to birth, up to age nineteen years;

(c) Pursuant to Title XXI of the federal Social Security Act, as amended, and the rules and regulations promulgated pursuant thereto, eligibility can only be conferred to a targeted low-income child, including an unborn child, under a separate child health program;

(d) Under Title XXI of the federal Social Security Act, as amended, and the rules and regulations promulgated pursuant thereto, child health assistance is available to benefit unborn children independent of the mother's eligibility and immigration status;

(e) Under Title XXI of the federal Social Security Act, as amended, and the rules and regulations promulgated pursuant thereto, child health assistance expressly includes prenatal care that connects to the health of the unborn child;

(f) Prenatal care has been clearly shown to reduce the likelihood of premature delivery or low birth weight, both of which are associated with a wide range of congenital disabilities as well as infant mortality, and such care can

detect a great number of serious and even life-threatening disabilities, many of which can now be successfully treated in utero;

(g) Ensuring prenatal care for more children will significantly help reduce infant mortality and morbidity rates and will spare many infants from the burden of congenital disabilities and reduce the cost of treating those congenital disabilities after birth;

(h) It is well established that access to prenatal care can improve health outcomes during infancy as well as over a child's life. Since healthy babies and children require less medical care than babies and children with health problems, provision of prenatal care will result in lower medical expenditures for the affected children in the long run; and

(i) Adopting federal law to provide for medical services related to unborn children before birth will result in healthier infants, better long-term child growth and development, and ultimate cost savings to the state through reduced expenditures for high cost neonatal and potential long-term medical rehabilitation.

(2) Such coverage shall be implemented through the creation of a separate program as allowed under Title XXI of the federal Social Security Act, as amended, and 42 C.F.R. 457.10, solely for the unborn children of mothers who are ineligible for coverage under Title XIX of the federal Social Security Act. All other aspects of the medical assistance program relating to the State Children's Health Insurance Program remain a medicaid expansion program as defined in 42 C.F.R. 457.10.

(3) The benefits provided pursuant to this subsection, unless the recipient qualifies for coverage under Title XIX of the federal Social Security Act, as amended, shall be prenatal care and pregnancy-related services connected to the health of the unborn child, including: (a) Professional fees for labor and delivery, including live birth, fetal death, miscarriage, and ectopic pregnancy; (b) pharmaceuticals and prescription vitamins; (c) outpatient hospital care; (d) radiology, ultrasound, and other necessary imaging; (e) necessary laboratory testing; (f) hospital costs related to labor and delivery; (g) services related to conditions that could complicate the pregnancy, including those for diagnosis or treatment of illness or medical conditions that threaten the carrying of the unborn child to full term or the safe delivery of the unborn child; and (h) other pregnancy-related services approved by the department. Services not covered under this subsection include medical issues separate to the mother and unrelated to pregnancy.

(4) The department shall receive the state and federal funds appropriated or provided for benefits provided pursuant to this section. Within thirty days after July 19, 2012, the department shall submit a state plan amendment or waiver for approval by the federal Centers for Medicare and Medicaid Services to provide coverage under the medical assistance program to persons eligible under this section.

(5) Eligibility shall be determined under this section using an income budgetary methodology that determines children's eligibility at no greater than one hundred eighty-five percent of the Office of Management and Budget income poverty guideline.

Source: Laws 2012, LB599, § 4.

68-973 Improper payments; postpayment reimbursement; legislative findings.

The Legislature finds that the medical assistance program would benefit from increased efforts to (1) prevent improper payments to service providers, including, but not limited to, enforcement of eligibility criteria for recipients of benefits, enforcement of enrollment criteria for providers of benefits, determination of third-party liability for benefits, review of claims for benefits prior to payment, and identification of the extent and cause of improper payment, (2) identify and recoup improper payments, including, but not limited to, identification and investigation of questionable payments for benefits, administrative recoupment of payments for benefits, and referral of cases of fraud to the state medicaid fraud control unit for prosecution, and (3) collect postpayment reimbursement, including, but not limited to, maximizing prescribed drug rebates and maximizing recoveries from estates for paid benefits.

Source: Laws 2012, LB541, § 2.

68-974 Recovery audit contractors; contracts; contents; health insurance premium assistance payment program; contract; department; powers and duties; report.

(1) The department shall contract with one or more recovery audit contractors to promote the integrity of the medical assistance program and to assist with cost-containment efforts and recovery audits. The contract or contracts shall include services for (a) cost-avoidance through identification of third-party liability, (b) cost recovery of third-party liability through postpayment reimbursement, (c) casualty recovery of payments by identifying and recovering costs for claims that were the result of an accident or neglect and payable by a casualty insurer, and (d) reviews of claims submitted by providers of services or other individuals furnishing items and services for which payment has been made to determine whether providers have been underpaid or overpaid and take actions to recover any overpayments identified.

(2) The department shall contract with one or more persons to support a health insurance premium assistance payment program.

(3) The department may enter into any other contracts deemed to increase the efforts to promote the integrity of the medical assistance program.

(4) Contracts entered into under the authority of this section may be on a contingent fee basis. Contracts entered into on a contingent fee basis shall provide that contingent fee payments are based upon amounts recovered, not amounts identified, and that contingent fee payments are not to be paid on amounts subsequently repaid due to determinations made in appeal proceedings. Contracts shall be in compliance with federal law and regulations when pertinent, including a limit on contingent fees of no more than twelve and one-half percent of amounts recovered, and initial contracts shall be entered into as soon as practicable under such federal law and regulations.

(5) All amounts recovered and savings generated as a result of this section shall be returned to the medical assistance program.

(6) The department shall by December 1, 2012, report to the Legislature the status of the contracts, including the parties, the programs and issues addressed, the estimated cost recovery, and the savings accrued as a result of the contracts.

(7) For purposes of this section:

(a) Person means bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations; and

(b) Recovery audit contractor means private entities with which the department contracts to audit claims for medical assistance, identify underpayments and overpayments, and recoup overpayments.

Source: Laws 2012, LB541, § 3.

ARTICLE 10 ASSISTANCE, GENERALLY

(a) ASSISTANCE TO THE AGED, BLIND, OR DISABLED

Section

68-1006.01. Personal needs allowance; amount authorized.

(b) PROCEDURE AND PENALTIES

68-1017. Assistance; violations; penalties.

68-1017.01. Supplemental Nutrition Assistance Program; violations; penalties.

68-1017.02. Supplemental Nutrition Assistance Program; department; duties; state outreach plan; report; contents; person ineligible; when.

(h) NON-UNITED-STATES CITIZENS

68-1070. Repealed. Laws 2011, LB 465, § 2.

(a) ASSISTANCE TO THE AGED, BLIND, OR DISABLED

68-1006.01 Personal needs allowance; amount authorized.

The Department of Health and Human Services shall include in the standard of need for eligible aged, blind, and disabled persons at least fifty dollars per month for a personal needs allowance if such persons reside in an alternative living arrangement.

For purposes of this section, an alternative living arrangement shall include board and room, a boarding home, a certified adult family home, a licensed assisted-living facility, a licensed residential child-caring agency as defined in section 71-1926, a licensed center for the developmentally disabled, and a long-term care facility.

Source: Laws 1991, LB 57, § 1; Laws 1996, LB 1044, § 308; Laws 1997, LB 608, § 3; Laws 1999, LB 119, § 1; Laws 2000, LB 819, § 79; Laws 2013, LB265, § 37.

(b) PROCEDURE AND PENALTIES

68-1017 Assistance; violations; penalties.

(1) Any person, including vendors and providers of medical assistance and social services, who, by means of a willfully false statement or representation, or by impersonation or other device, obtains or attempts to obtain, or aids or abets any person to obtain or to attempt to obtain (a) an assistance certificate of award to which he or she is not entitled, (b) any commodity, any foodstuff, any food instrument, any Supplemental Nutrition Assistance Program benefit or electronic benefit card, or any payment to which such individual is not entitled or a larger payment than that to which he or she is entitled, (c) any payment

made on behalf of a recipient of medical assistance or social services, or (d) any other benefit administered by the Department of Health and Human Services, or who violates any statutory provision relating to assistance to the aged, blind, or disabled, aid to dependent children, social services, or medical assistance, commits an offense.

(2) Any person who commits an offense under subsection (1) of this section shall upon conviction be punished as follows: (a) If the aggregate value of all funds or other benefits obtained or attempted to be obtained is less than five hundred dollars, the person so convicted shall be guilty of a Class III misdemeanor; or (b) if the aggregate value of all funds and other benefits obtained or attempted to be obtained is five hundred dollars or more, the person so convicted shall be guilty of a Class IV felony.

Source: Laws 1965, c. 394, § 5, p. 1262; Laws 1969, c. 541, § 1, p. 2192; Laws 1977, LB 39, § 127; Laws 1984, LB 1127, § 2; Laws 1996, LB 1044, § 314; Laws 1998, LB 1073, § 58; Laws 2007, LB296, § 271; Laws 2009, LB288, § 26; Laws 2010, LB849, § 14.

68-1017.01 Supplemental Nutrition Assistance Program; violations; penalties.

(1) A person commits an offense if he or she knowingly uses, alters, or transfers any Supplemental Nutrition Assistance Program benefits or electronic benefit cards or any authorizations to participate in the Supplemental Nutrition Assistance Program in any manner not authorized by law. An offense under this subsection shall be a Class III misdemeanor if the value of the Supplemental Nutrition Assistance Program benefits, electronic benefit cards, or authorizations is less than five hundred dollars and shall be a Class IV felony if the value is five hundred dollars or more.

(2) A person commits an offense if he or she knowingly (a) possesses any Supplemental Nutrition Assistance Program benefits or electronic benefit cards or any authorizations to participate in the Supplemental Nutrition Assistance Program when such individual is not authorized by law to possess them, (b) redeems Supplemental Nutrition Assistance Program benefits or electronic benefit cards when he or she is not authorized by law to redeem them, or (c) redeems Supplemental Nutrition Assistance Program benefits or electronic benefit cards for purposes not authorized by law. An offense under this subsection shall be a Class III misdemeanor if the value of the Supplemental Nutrition Assistance Program benefits, electronic benefit cards, or authorizations is less than five hundred dollars and shall be a Class IV felony if the value is five hundred dollars or more.

(3) A person commits an offense if he or she knowingly possesses blank authorizations to participate in the Supplemental Nutrition Assistance Program when such possession is not authorized by law. An offense under this subsection shall be a Class IV felony.

(4) When any Supplemental Nutrition Assistance Program benefits or electronic benefit cards or any authorizations to participate in the Supplemental Nutrition Assistance Program of various values are obtained in violation of this section pursuant to one scheme or a continuing course of conduct, whether

from the same or several sources, such conduct may be considered as one offense, and the values aggregated in determining the grade of the offense.

Source: Laws 1984, LB 1127, § 3; Laws 1998, LB 1073, § 59; Laws 2009, LB288, § 27; Laws 2010, LB849, § 15.

68-1017.02 Supplemental Nutrition Assistance Program; department; duties; state outreach plan; report; contents; person ineligible; when.

(1)(a) The Department of Health and Human Services shall apply for and utilize to the maximum extent possible, within limits established by the Legislature, any and all appropriate options available to the state under the federal Supplemental Nutrition Assistance Program and regulations adopted under such program to maximize the number of Nebraska residents being served under such program within such limits. The department shall seek to maximize federal funding for such program and minimize the utilization of General Funds for such program and shall employ the personnel necessary to determine the options available to the state and issue the report to the Legislature required by subdivision (b) of this subsection.

(b) The department shall submit electronically an annual report to the Health and Human Services Committee of the Legislature by December 1 on efforts by the department to carry out the provisions of this subsection. Such report shall provide the committee with all necessary and appropriate information to enable the committee to conduct a meaningful evaluation of such efforts. Such information shall include, but not be limited to, a clear description of various options available to the state under the federal Supplemental Nutrition Assistance Program, the department's evaluation of and any action taken by the department with respect to such options, the number of persons being served under such program, and any and all costs and expenditures associated with such program.

(c) The Health and Human Services Committee of the Legislature, after receipt and evaluation of the report required in subdivision (b) of this subsection, shall issue recommendations to the department on any further action necessary by the department to meet the requirements of this section.

(2)(a) The department shall develop a state outreach plan to promote access by eligible persons to benefits of the Supplemental Nutrition Assistance Program. The plan shall meet the criteria established by the Food and Nutrition Service of the United States Department of Agriculture for approval of state outreach plans. The Department of Health and Human Services may apply for and accept gifts, grants, and donations to develop and implement the state outreach plan.

(b) For purposes of developing and implementing the state outreach plan, the department shall partner with one or more counties or nonprofit organizations. If the department enters into a contract with a nonprofit organization relating to the state outreach plan, the contract may specify that the nonprofit organization is responsible for seeking sufficient gifts, grants, or donations necessary for the development and implementation of the state outreach plan and may additionally specify that any costs to the department associated with the award and management of the contract or the implementation or administration of the state outreach plan shall be paid out of private or federal funds received for development and implementation of the state outreach plan.

(c) The department shall submit the state outreach plan to the Food and Nutrition Service of the United States Department of Agriculture for approval on or before August 1, 2011, and shall request any federal matching funds that may be available upon approval of the state outreach plan. It is the intent of the Legislature that the State of Nebraska and the Department of Health and Human Services use any additional public or private funds to offset costs associated with increased caseload resulting from the implementation of the state outreach plan.

(d) The department shall be exempt from implementing or administering a state outreach plan under this subsection, but not from developing such a plan, if it does not receive private or federal funds sufficient to cover the department's costs associated with the implementation and administration of the plan, including any costs associated with increased caseload resulting from the implementation of the plan.

(3)(a)(i) On or before October 1, 2011, the department shall create a TANF-funded program or policy that, in compliance with federal law, establishes categorical eligibility for federal food assistance benefits pursuant to the Supplemental Nutrition Assistance Program to maximize the number of Nebraska residents being served under such program in a manner that does not increase the current gross income eligibility limit.

(ii) Such TANF-funded program or policy shall eliminate all asset limits for eligibility for federal food assistance benefits, except that the total of liquid assets which includes cash on hand and funds in personal checking and savings accounts, money market accounts, and share accounts shall not exceed twenty-five thousand dollars pursuant to the Supplemental Nutrition Assistance Program, as allowed under federal law and under 7 C.F.R. 273.2(j)(2).

(iii) This subsection becomes effective only if the department receives funds pursuant to federal participation that may be used to implement this subsection.

(b) For purposes of this subsection:

(i) Federal law means the federal Food and Nutrition Act of 2008, 7 U.S.C. 2011 et seq., and regulations adopted under the act; and

(ii) TANF means the federal Temporary Assistance for Needy Families program established in 42 U.S.C. 601 et seq.

(4)(a) Within the limits specified in this subsection, the State of Nebraska opts out of the provision of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as such act existed on January 1, 2009, that eliminates eligibility for the Supplemental Nutrition Assistance Program for any person convicted of a felony involving the possession, use, or distribution of a controlled substance.

(b) A person shall be ineligible for Supplemental Nutrition Assistance Program benefits under this subsection if he or she (i) has had three or more felony convictions for the possession or use of a controlled substance or (ii) has been convicted of a felony involving the sale or distribution of a controlled substance or the intent to sell or distribute a controlled substance. A person with one or two felony convictions for the possession or use of a controlled substance shall only be eligible to receive Supplemental Nutrition Assistance Program benefits under this subsection if he or she is participating in or has completed a state-licensed or nationally accredited substance abuse treatment program since the

date of conviction. The determination of such participation or completion shall be made by the treatment provider administering the program.

Source: Laws 2003, LB 667, § 22; Laws 2005, LB 301, § 2; Laws 2008, LB171, § 1; Laws 2009, LB288, § 28; Laws 2011, LB543, § 1; Laws 2012, LB782, § 95.

(h) NON-UNITED-STATES CITIZENS

68-1070 Repealed. Laws 2011, LB 465, § 2.

ARTICLE 11

AGING

(b) AGING NEBRASKANS TASK FORCE

Section

- 68-1107. Aging Nebraskans Task Force; created; purpose; executive committee; members; duties; statewide strategic plan for long-term care services; creation; consideration.
- 68-1108. Aging Nebraskans Task Force; report; Department of Health and Human Services; report.
- 68-1109. Aging Nebraskans Task Force; termination.

(b) AGING NEBRASKANS TASK FORCE

68-1107 Aging Nebraskans Task Force; created; purpose; executive committee; members; duties; statewide strategic plan for long-term care services; creation; consideration.

(1) The Aging Nebraskans Task Force is created. The purpose of the task force is to develop and facilitate implementation of a statewide strategic plan for addressing the needs of the aging population in the state. The task force shall provide a forum for collaboration among state, local, community, public, and private stakeholders in long-term care programs.

(2)(a) The executive committee of the task force shall include as voting members the chairperson of the Health and Human Services Committee of the Legislature, a member of the Appropriations Committee of the Legislature appointed by the Executive Board of the Legislative Council, a member of the Health and Human Services Committee of the Legislature appointed by the Executive Board of the Legislative Council, a member of the Legislature's Planning Committee appointed by the Executive Board of the Legislative Council, and an at-large member appointed by the Executive Board of the Legislative Council. The voting members of the executive committee shall choose a chairperson and vice-chairperson from among the voting members.

(b) The chief executive officer of the Department of Health and Human Services or his or her designee and the Chief Justice of the Supreme Court or his or her designee shall be nonvoting, ex officio members of the executive committee of the task force.

(c) The remaining four members of the task force shall be nonvoting members appointed by the executive committee of the task force through an application and selection process, representing stakeholders in the long-term care system and may include a representative of the Division of Medicaid and Long-Term Care Advisory Committee on Aging, representatives of health care providers, elder law attorneys, representatives of the long-term care ombuds-

man program, health care economists, geriatric specialists, family caregivers of seniors in at-home care, providers of services to the elderly, seniors currently or previously in institutional care, and aging advocacy organizations.

(3) The executive committee of the task force shall advise the task force regarding the interaction among the three branches of government related to long-term care programs and services. The members of the executive committee shall each represent his or her own branch of government, and no member of the executive committee shall participate in actions that could be deemed to be the exercise of the duties and prerogatives of another branch of government or that improperly delegate the powers and duties of any branch of government to another branch of government.

(4) The task force shall work with administrators of area agencies on aging, nursing home and assisted-living residence providers, hospitals, rehabilitation centers, managed care companies, senior citizen centers, community stakeholders, advocates for elder services and programs, the Center for Public Affairs Research of the College of Public Affairs and Community Service at the University of Nebraska at Omaha, and seniors statewide to establish effective community collaboration for informed decisionmaking that supports the provisions of effective and efficient long-term care services.

(5) The task force shall create a statewide strategic plan for long-term care services in Nebraska which shall consider, but not be limited to:

(a) Promotion of independent living through provision of long-term care services and support that enable an individual to live in the setting of his or her choice;

(b) Provision of leadership to support sound fiscal management of long-term care budgets so that Nebraska will be able to meet the increasing demand for long-term care services as a growing portion of the state's population reaches the age of eighty years;

(c) Expedited creation of workforce development and training programs specific to the needs of and in response to Nebraska's growing aging population;

(d) The identification of gaps in the service delivery system that contribute to the inefficient and ineffective delivery of services; and

(e) Development of a process for evaluating the quality of residential and home and community-based long-term care services and support.

Source: Laws 2014, LB690, § 2.

Effective date July 18, 2014.

68-1108 Aging Nebraskans Task Force; report; Department of Health and Human Services; report.

On or before December 15, 2014, the Aging Nebraskans Task Force shall present electronically to the Legislature a report of recommendations for the statewide strategic plan described in section 68-1107. The Department of Health and Human Services shall also annually report electronically to the Legislature the percentage growth of medicaid spending for people over sixty-five years of age for no fewer than five years following acceptance of the

application to the State Balancing Incentive Payments Program pursuant to section 81-3138.

Source: Laws 2014, LB690, § 3.
Effective date July 18, 2014.

68-1109 Aging Nebraskans Task Force; termination.

The Aging Nebraskans Task Force terminates on June 30, 2016, unless extended by the Legislature.

Source: Laws 2014, LB690, § 4.
Effective date July 18, 2014.

**ARTICLE 12
SOCIAL SERVICES**

Section

- 68-1201. Eligibility determination; exclusion of certain assets and income.
- 68-1202. Social services; services included.
- 68-1204. Social services or specialized developmental disability services; rules and regulations; agreements; fee schedules.
- 68-1206. Social services; administration; contracts; payments; duties.
- 68-1207. Department of Health and Human Services; public child welfare services; supervise; department; pilot project; caseload requirements; case plan developed.
- 68-1207.01. Department of Health and Human Services; caseloads report; contents.
- 68-1211. Case management of child welfare services; legislative findings and declarations.
- 68-1212. Department of Health and Human Services; cases; case manager; employee of department; duties; case management lead agency model pilot project; contract authorized; conditions, performance outcomes, and oversight; extension of contract.
- 68-1213. Pilot project; evaluation by Legislature.
- 68-1214. Case managers; training program; department; duties; training curriculum; contents.

68-1201 Eligibility determination; exclusion of certain assets and income.

In determining eligibility for the program for aid to dependent children pursuant to section 43-512, for the Supplemental Nutrition Assistance Program administered by the State of Nebraska pursuant to the federal Food and Nutrition Act of 2008, 7 U.S.C. 2011 et seq., and for the child care subsidy program established pursuant to section 68-1202, the following shall not be included in determining assets or income:

(1) Assets in or income from an educational savings account, a Coverdell educational savings account described in 26 U.S.C. 530, a qualified tuition program established pursuant to 26 U.S.C. 529, or any similar savings account or plan established to save for qualified higher education expenses as defined in section 85-1802;

(2) Income from scholarships or grants related to postsecondary education, whether merit-based, need-based, or a combination thereof; and

(3) Income from postsecondary educational work-study programs, whether federally funded, funded by a postsecondary educational institution, or funded from any other source.

Source: Laws 2014, LB359, § 1.
Effective date July 18, 2014.

68-1202 Social services; services included.

Social services may be provided on behalf of recipients with payments for such social services made directly to vendors. Social services shall include those mandatory and optional services to former, present, or potential social services recipients provided for under the federal Social Security Act, as amended, and described by the State of Nebraska in the approved State Plan for Services. Such services may include, but shall not be limited to, foster care for children, child care, family planning, treatment for alcoholism and drug addiction, treatment for persons with an intellectual disability, health-related services, protective services for children, homemaker services, employment services, foster care for adults, protective services for adults, transportation services, home management and other functional education services, housing improvement services, legal services, adult day services, home delivered or congregate meals, educational services, and secondary prevention services, including, but not limited to, home visitation, child screening and early intervention, and parenting education programs.

Source: Laws 1973, LB 511, § 2; Laws 1986, LB 1177, § 28; Laws 2000, LB 819, § 82; Laws 2005, LB 264, § 1; Laws 2011, LB177, § 10; Laws 2013, LB23, § 15.

68-1204 Social services or specialized developmental disability services; rules and regulations; agreements; fee schedules.

(1) For the purpose of providing or purchasing social services described in section 68-1202, the state hereby accepts and assents to all applicable provisions of the federal Social Security Act, as amended. The Department of Health and Human Services may adopt and promulgate rules and regulations, enter into agreements, and adopt fee schedules with regard to social services described in section 68-1202.

(2) The department shall adopt and promulgate rules and regulations to administer funds under Title XX of the federal Social Security Act, as amended, designated for specialized developmental disability services.

Source: Laws 1973, LB 511, § 4; Laws 1991, LB 830, § 31; Laws 1996, LB 1044, § 345; Laws 2006, LB 994, § 66; Laws 2007, LB296, § 277; Laws 2011, LB177, § 11.

68-1206 Social services; administration; contracts; payments; duties.

(1) The Department of Health and Human Services shall administer the program of social services in this state. The department may contract with other social agencies for the purchase of social services at rates not to exceed those prevailing in the state or the cost at which the department could provide those services. The statutory maximum payments for the separate program of aid to dependent children shall apply only to public assistance grants and shall not apply to payments for social services. As part of the provision of social services authorized by section 68-1202, the department shall participate in the federal child care assistance program under 42 U.S.C. 618, as such section existed on January 1, 2013, and provide child care assistance to families with incomes up to one hundred twenty-five percent of the federal poverty level for FY2013-14 and one hundred thirty percent of the federal poverty level for FY2014-15 and each fiscal year thereafter.

(2) As part of the provision of social services authorized by this section and section 68-1202, the department shall participate in the federal Child Care Subsidy program. In determining ongoing eligibility for this program, ten percent of a household's gross earned income shall be disregarded after twelve continuous months on the program and at each subsequent redetermination. Initial program eligibility standards shall not be impacted by the provisions of this subsection.

(3) In determining the rate or rates to be paid by the department for child care as defined in section 43-2605, the department shall adopt a fixed-rate schedule for the state or a fixed-rate schedule for an area of the state applicable to each child care program category of provider as defined in section 71-1910 which may claim reimbursement for services provided by the federal Child Care Subsidy program, except that the department shall not pay a rate higher than that charged by an individual provider to that provider's private clients. The schedule may provide separate rates for care for infants, for children with special needs, including disabilities or technological dependence, or for other individual categories of children. The schedule may also provide tiered rates based upon a quality scale rating of step three or higher under the Step Up to Quality Child Care Act. The schedule shall be effective on October 1 of every year and shall be revised annually by the department.

Source: Laws 1973, LB 511, § 6; Laws 1982, LB 522, § 44; Laws 1991, LB 836, § 26; Laws 1995, LB 401, § 22; Laws 1996, LB 1044, § 347; Laws 2006, LB 994, § 68; Laws 2007, LB296, § 279; Laws 2013, LB507, § 15; Laws 2014, LB359, § 3.
Effective date July 18, 2014.

Cross References

Step Up to Quality Child Care Act, see section 71-1952.

68-1207 Department of Health and Human Services; public child welfare services; supervise; department; pilot project; caseload requirements; case plan developed.

(1) The Department of Health and Human Services shall supervise all public child welfare services as described by law. The department and the pilot project described in section 68-1212 shall maintain caseloads to carry out child welfare services which provide for adequate, timely, and indepth investigations and services to children and families. Caseloads shall range between twelve and seventeen cases as determined pursuant to subsection (2) of this section. In establishing the specific caseloads within such range, the department and the pilot project shall (a) include the workload factors that may differ due to geographic responsibilities, office location, and the travel required to provide a timely response in the investigation of abuse and neglect, the protection of children, and the provision of services to children and families in a uniform and consistent statewide manner and (b) utilize the workload criteria of the standards established as of January 1, 2012, by the Child Welfare League of America. The average caseload shall be reduced by the department in all service areas as designated pursuant to section 81-3116 and by the pilot project to comply with the caseload range described in this subsection by September 1, 2012. Beginning September 15, 2012, the department shall include in its annual report required pursuant to section 68-1207.01 a report on the attainment of the decrease according to such caseload standards. The department's

annual report shall also include changes in the standards of the Child Welfare League of America or its successor.

(2) Caseload size shall be determined in the following manner: (a) If children are placed in the home, the family shall count as one case regardless of how many children are placed in the home; (b) if a child is placed out of the home, the child shall count as one case; (c) if, within one family, one or more children are placed in the home and one or more children are placed out of the home, the children placed in the home shall count as one case and each child placed out of the home shall count as one case; and (d) any child receiving services from the department or a private entity under contract with the department shall be counted as provided in subdivisions (a) through (c) of this subsection whether or not such child is a ward of the state. For purposes of this subsection, a child is considered to be placed in the home if the child is placed with his or her biological or adoptive parent or a legal guardian and a child is considered to be placed out of the home if the child is placed in a foster family home as defined in section 71-1901, a residential child-caring agency as defined in section 71-1926, or any other setting which is not the child's planned permanent home.

(3) To insure appropriate oversight of noncourt and voluntary cases when any child welfare services are provided, either by the department or by a lead agency participating in the pilot project, as a result of a child safety assessment, the department or lead agency shall develop a case plan that specifies the services to be provided and the actions to be taken by the department or lead agency and the family in each such case. Such case plan shall clearly indicate, when appropriate, that children are receiving services to prevent out-of-home placement and that, absent preventive services, foster care is the planned arrangement for the child.

(4) To carry out the provisions of this section, the Legislature shall provide funds for additional staff.

Source: Laws 1973, LB 511, § 7; Laws 1985, LB 1, § 2; Laws 1990, LB 720, § 1; Laws 1996, LB 1044, § 348; Laws 2005, LB 264, § 2; Laws 2007, LB296, § 280; Laws 2012, LB961, § 3; Laws 2013, LB265, § 38; Laws 2013, LB269, § 8.

68-1207.01 Department of Health and Human Services; caseloads report; contents.

The Department of Health and Human Services shall annually provide a report to the Legislature and Governor outlining the caseloads of child protective services, the factors considered in their establishment, and the fiscal resources necessary for their maintenance. The report submitted to the Legislature shall be submitted electronically. For 2012, 2013, and 2014, the department shall also provide electronically the report to the Health and Human Services Committee of the Legislature on or before September 15. Such report shall include:

(1) A comparison of caseloads established by the department with the workload standards recommended by national child welfare organizations along with the amount of fiscal resources necessary to maintain such caseloads in Nebraska;

(2)(a) The number of child welfare case managers employed by the State of Nebraska and child welfare services workers, providing services directly to

children and families, who are under contract with the State of Nebraska or employed by a private entity under contract with the State of Nebraska and (b) statistics on the average length of employment in such positions, statewide and by service area designated pursuant to section 81-3116;

(3)(a) The average caseload of child welfare case managers employed by the State of Nebraska and child welfare services workers, providing services directly to children and families, who are under contract with the State of Nebraska or employed by a private entity under contract with the State of Nebraska and (b) the outcomes of such cases, including the number of children reunited with their families, children adopted, children in guardianships, placement of children with relatives, and other permanent resolutions established, statewide and by service area designated pursuant to section 81-3116; and

(4) The average cost of training child welfare case managers employed by the State of Nebraska and child welfare services workers, providing child welfare services directly to children and families, who are under contract with the State of Nebraska or employed by a private entity under contract with the State of Nebraska, statewide and by service area as designated pursuant to section 81-3116.

Source: Laws 1990, LB 720, § 2; Laws 1996, LB 1044, § 349; Laws 2005, LB 264, § 3; Laws 2007, LB296, § 281; Laws 2012, LB782, § 96; Laws 2012, LB1160, § 14; Laws 2013, LB222, § 22.

68-1211 Case management of child welfare services; legislative findings and declarations.

The Legislature finds and declares that:

(1) The State of Nebraska has the legal responsibility for children in its custody and accordingly should maintain the decisionmaking authority inherent in direct case management of child welfare services;

(2) Training and longevity of child welfare case managers directly impact the safety, permanency, and well-being of children receiving child welfare services;

(3) Meaningful reform of the child welfare system can occur only when competent, skilled case managers educated in evidence-based child welfare best practices are making determinations for the care of, and services to, children and families and providing first-hand, direct information for decisionmaking and high-quality evidence to the courts relating to the best interests of the children;

(4) Maintaining quality, well-trained, and experienced case managers is essential and will be a core component in child welfare reform, including statewide strategic planning and implementation. Additional resources and funds for training, support, and compensation may be required;

(5) Notwithstanding the outsourcing of case management, the Department of Health and Human Services retains legal custody of wards of the state and remains responsible for their care. Inherent in privatized case management is the loss of trained, skilled individuals employed by the state providing the stable workforce essential to fulfilling the state's responsibilities for children who are wards of the state, resulting in the risk of loss of a trained, experienced, and stable workforce;

(6) Privatization of case management of child welfare services can and has resulted in dependence on one or more private entities for the provision of an

essential specialized service that is extremely difficult to replace. As a result, the risk of a private entity abandoning the contract, either voluntarily or involuntarily, creates a very high risk to the entire child welfare system, including essential child welfare services;

(7) Privatization of case management and child welfare services, including responsibilities for both service coordination and service delivery by private entities, may create conflicts of interest because the resulting financial incentives can undermine decisionmaking regarding the appropriate services that would be in the best interests of the children. Additionally, such privatization of child welfare services, including case management, can result in loss of services across the spectrum of child welfare services by reducing market competition and driving many providers out of the market;

(8) Privatization of case management and of child welfare services has resulted in issues relating to caseloads, placement, turnover, communication, and stability within the child welfare system that adversely affect outcomes and permanency for children and families; and

(9) Private lead agency contracts require complex monitoring capabilities to insure compliance and oversight of performance, including private case managers, to insure improved child welfare outcomes.

Source: Laws 2012, LB961, § 1.

68-1212 Department of Health and Human Services; cases; case manager; employee of department; duties; case management lead agency model pilot project; contract authorized; conditions, performance outcomes, and oversight; extension of contract.

(1) Except as provided in subsection (2) of this section, by April 1, 2012, for all cases in which a court has awarded a juvenile to the care of the Department of Health and Human Services according to subsection (1) of section 43-285 and for any noncourt and voluntary cases, the case manager shall be an employee of the department. Such case manager shall be responsible for and shall directly oversee: Case planning; service authorization; investigation of compliance; monitoring and evaluation of the care and services provided to children and families; and decisionmaking regarding the determination of visitation and the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile under subsection (1) of section 43-285. Such case manager shall be responsible for decisionmaking and direct preparation regarding the proposed plan for the care, placement, services, and permanency of the juvenile filed with the court required under subsection (2) of section 43-285. The health and safety of the juvenile shall be the paramount concern in the proposed plan in accordance with such subsection.

(2) The department may contract with a lead agency for a case management lead agency model pilot project in the department's eastern service area as designated pursuant to section 81-3116. The department shall include in the pilot project the appropriate conditions, performance outcomes, and oversight for the lead agency, including, but not be limited to:

(a) The reporting and survey requirements of lead agencies described in sections 43-4406 and 43-4407;

(b) Departmental monitoring and functional capacities of lead agencies described in section 43-4408;

(c) The key areas of evaluation specified in subsection (3) of section 43-4409;

(d) Compliance and coordination with the development of the statewide strategic plan for child welfare program and service reform pursuant to Laws 2012, LB821; and

(e) Assurance of financial accountability and reporting by the lead agency.

(3) Before June 30, 2014, the department may extend the contract for the pilot project described in subsection (2) of this section. The lead agency shall also comply with the requirements of section 43-4204.

Source: Laws 2012, LB961, § 2; Laws 2014, LB660, § 1.
Effective date April 3, 2014.

68-1213 Pilot project; evaluation by Legislature.

If the pilot project described in section 68-1212 is extended by the Department of Health and Human Services, an evaluation of the pilot project shall be completed by the Legislature prior to December 31, 2014. The Legislature shall utilize all necessary resources, including the hiring of a consultant if deemed necessary. The department and any child welfare entity which has contracted with the department shall provide all data and information to the Legislature to assist in the evaluation.

Source: Laws 2014, LB660, § 2.
Effective date April 3, 2014.

68-1214 Case managers; training program; department; duties; training curriculum; contents.

To facilitate consistency in training all case managers and allow for Title IV-E reimbursement for case manager training under Title IV-E of the federal Social Security Act, as amended, the same program for initial training of case managers shall be utilized for all case managers, whether they are employed by the department or by an organization under contract with the department. The initial training of all case managers shall be provided by the department or one or more organizations under contract with the department. The department shall create a formal system for measuring and evaluating the quality of such training. All case managers shall complete a formal assessment process after initial training to demonstrate competency prior to assuming responsibilities as a case manager. The training curriculum for case managers shall include, but not be limited to: (1) An understanding of the benefits of utilizing evidence-based and promising casework practices; (2) the importance of guaranteeing service providers' fidelity to evidence-based and promising casework practices; and (3) a commitment to evidence-based and promising family-centered casework practices that utilize a least restrictive approach for children and families.

Source: Laws 2014, LB853, § 45.
Effective date July 18, 2014.

ARTICLE 15

DISABLED PERSONS AND FAMILY SUPPORT

(a) DISABLED PERSONS AND FAMILY SUPPORT ACT

Section
68-1518. Department; report; contents.

(a) DISABLED PERSONS AND FAMILY SUPPORT ACT

68-1518 Department; report; contents.

The department shall file an annual report with the Governor and the Clerk of the Legislature on or before January 1 of each year beginning January 1, 1983. The report submitted to the Clerk of the Legislature shall be submitted electronically. Such report shall include:

(1) The number of families and disabled persons applying for support pursuant to the Disabled Persons and Family Support Act and the number of families and disabled persons receiving support pursuant to the act;

(2) The types of services and programs being applied for and those being provided through the act;

(3) The effects of the support provided under the act on the disabled and their families; and

(4) Any proposals for amendment of the act.

Source: Laws 1981, LB 389, § 18; Laws 2012, LB782, § 97.

ARTICLE 16**HOMELESS SHELTER ASSISTANCE**

Section

68-1604. Homeless Shelter Assistance Trust Fund; created; use; investment.

68-1604 Homeless Shelter Assistance Trust Fund; created; use; investment.

The Homeless Shelter Assistance Trust Fund is hereby created. The fund shall include the proceeds raised from the documentary stamp tax and remitted for such fund pursuant to section 76-903 and transfers authorized by the Legislature. Money remitted to such fund shall be used by the department (1) for grants to eligible shelter providers as set out in section 68-1605 for the purpose of assisting in the alleviation of homelessness, to provide temporary and permanent shelters for homeless persons, to encourage the development of projects which link housing assistance to programs promoting the concept of self-sufficiency, and to address the needs of the migrant farmworker and (2) to aid in defraying the expenses of administering the Homeless Shelter Assistance Trust Fund Act, which shall not exceed seventy-five thousand dollars in any fiscal year.

Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1992, LB 1192, § 4; Laws 1994, LB 1066, § 62; Laws 2001, LB 516, § 2; Laws 2005, LB 301, § 8; Laws 2013, LB199, § 28.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 17

WELFARE REFORM

(a) WELFARE REFORM ACT

Section

- 68-1708. Act, how cited.
- 68-1713. Department of Health and Human Services; implementation of policies; transitional health care benefits.
- 68-1721. Principal wage earner and other nonexempt members of applicant family; duties.
- 68-1726. Assistance under act; eligibility factors.
- 68-1735. Creating self-sufficiency contract and meeting work activity requirement; applicant under twenty years of age; activities authorized.
- 68-1735.01. Creating self-sufficiency contract and meeting work activity requirement; applicant; activities authorized.
- 68-1735.02. Department of Health and Human Services; report; contents.
- 68-1735.03. Legislative intent.
- 68-1735.04. Sections; termination.

(a) WELFARE REFORM ACT

68-1708 Act, how cited.

Sections 68-1708 to 68-1735.04 shall be known and may be cited as the Welfare Reform Act.

Source: Laws 1994, LB 1224, § 8; Laws 1995, LB 455, § 8; Laws 1996, LB 892, § 1; Laws 1997, LB 864, § 11; Laws 2000, LB 1352, § 2; Laws 2012, LB507, § 1.

68-1713 Department of Health and Human Services; implementation of policies; transitional health care benefits.

(1) The Department of Health and Human Services shall implement the following policies:

- (a) Permit Work Experience in Private for-Profit Enterprises;
- (b) Permit Job Search;
- (c) Permit Employment to be Considered a Program Component;
- (d) Make Sanctions More Stringent to Emphasize Participant Obligations;
- (e) Alternative Hearing Process;
- (f) Permit Adults in Two-Parent Households to Participate in Activities Based on Their Self-Sufficiency Needs;
- (g) Eliminate Exemptions for Individuals with Children Between the Ages of 12 Weeks and Age Six;
- (h) Providing Poor Working Families with Transitional Child Care to Ease the Transition from Welfare to Self-Sufficiency;
- (i) Provide Transitional Health Care for 12 Months After Termination of ADC if funding for such transitional medical assistance is available under Title XIX of the federal Social Security Act, as amended, as described in section 68-906;
- (j) Require Adults to Ensure that Children in the Family Unit Attend School;
- (k) Encourage Minor Parents to Live with Their Parents;
- (l) Establish a Resource Limit of \$4,000 for a single individual and \$6,000 for two or more individuals for ADC;

(m) Exclude the Value of One Vehicle Per Family When Determining ADC Eligibility;

(n) Exclude the Cash Value of Life Insurance Policies in Calculating Resources for ADC;

(o) Establish the Supplemental Nutrition Assistance Program as a Continuous Benefit with Eligibility Reevaluated with Yearly Redeterminations;

(p) Establish a Budget the Gap Methodology Whereby Countable Earned Income is Subtracted from the Standard of the Need and Payment is Based on the Difference or Maximum Payment Level, Whichever is Less. That this Gap be Established at a Level that Encourages Work but at Least at a Level that Ensures that Those Currently Eligible for ADC do not Lose Eligibility Because of the Adoption of this Methodology;

(q) Adopt an Earned Income Disregard of Twenty Percent of Gross Earnings in the ADC Program, One Hundred Dollars in the Related Medical Assistance Program, and Income and Assets Described in section 68-1201;

(r) Disregard Financial Assistance Described in section 68-1201 and Other Financial Assistance Intended for Books, Tuition, or Other Self-Sufficiency Related Use;

(s) Culture: Eliminate the 100-Hour Rule, The Quarter of Work Requirement, and The 30-Day Unemployed/Underemployed Period for ADC-UP Eligibility; and

(t) Make ADC a Time-Limited Program.

(2) The Department of Health and Human Services shall (a) apply for a waiver to allow for a sliding-fee schedule for the population served by the caretaker relative program or (b) pursue other public or private mechanisms, to provide for transitional health care benefits to individuals and families who do not qualify for cash assistance. It is the intent of the Legislature that transitional health care coverage be made available on a sliding-scale basis to individuals and families with incomes up to one hundred eighty-five percent of the federal poverty level if other health care coverage is not available.

Source: Laws 1994, LB 1224, § 13; Laws 1995, LB 455, § 10; Laws 1996, LB 1044, § 357; Laws 1997, LB 864, § 13; Laws 2002, Second Spec. Sess., LB 8, § 3; Laws 2006, LB 994, § 77; Laws 2007, LB351, § 6; Laws 2009, LB288, § 30; Laws 2014, LB359, § 4. Effective date July 18, 2014.

68-1721 Principal wage earner and other nonexempt members of applicant family; duties.

(1) Under the self-sufficiency contract developed under section 68-1719, the principal wage earner and other nonexempt members of the applicant family shall be required to participate in one or more of the following approved activities, including, but not limited to, education, job skills training, work experience, job search, or employment.

(2) Education shall consist of the general education development program, high school, Adult Basic Education, English as a Second Language, postsecondary education, or other education programs approved in the contract.

(3) Job skills training shall include vocational training in technical job skills and equivalent knowledge. Activities shall consist of formalized, technical job

skills training, apprenticeships, on-the-job training, or training in the operation of a microbusiness enterprise. The types of training, apprenticeships, or training positions may include, but need not be limited to, the ability to provide services such as home repairs, automobile repairs, respite care, foster care, personal care, and child care. Job skills training shall be prioritized and approved for occupations that facilitate economic self-sufficiency.

(4) The purpose of work experience shall be to improve the employability of applicants by providing work experience and training to assist them to move promptly into regular public or private employment. Work experience shall mean unpaid work in a public, private, for-profit, or nonprofit business or organization. Work experience placements shall take into account the individual's prior training, skills, and experience. A placement shall not exceed six months.

(5) Job search shall assist adult members of recipient families in finding their own jobs. The emphasis shall be placed on teaching the individual to take responsibility for his or her own job development and placement.

(6) Employment shall consist of work for pay. The employment may be full-time or part-time but shall be adequate to help the recipient family reach economic self-sufficiency.

(7) For purposes of creating the self-sufficiency contract and meeting the applicant's work activity requirement, an applicant shall be allowed to engage in vocational training that leads to an associate degree, a diploma, or a certificate for a minimum of twenty hours per week for up to thirty-six months. This subsection terminates on December 31, 2016.

Source: Laws 1994, LB 1224, § 21; Laws 1995, LB 455, § 14; Laws 2006, LB 994, § 78; Laws 2007, LB351, § 8; Laws 2009, LB458, § 1; Laws 2012, LB842, § 1.

68-1726 Assistance under act; eligibility factors.

Based on the comprehensive assets assessment, each individual and family receiving assistance under the Welfare Reform Act shall reach for his or her highest level of economic self-sufficiency or the family's highest level of economic self-sufficiency. The following eligibility factors shall apply:

(1) Financial resources, excluding the primary home and furnishings and the primary automobile, shall not exceed four thousand dollars in value for a single individual and six thousand dollars in value for two or more individuals;

(2) Available resources, including, but not limited to, savings accounts and real estate, shall be used in determining financial resources, except that income and assets described in section 68-1201 shall not be included in determination of available resources under this section;

(3) Income received by family members, except income earned by children attending school and except as provided in section 68-1201, shall be considered in determining total family income. Income earned by an individual or a family by working shall be treated differently than unearned income in determining the amount of cash assistance as follows:

(a) Earned income shall be counted in determining the level of cash assistance after disregarding an amount of earned income equal to twenty percent of earned income or other incentives to work;

(b) Financial assistance provided by other programs that support the transition to economic self-sufficiency shall be considered to the extent the payments are intended to provide for life's necessities; and

(c) Financial assistance or those portions of it intended for books, tuition, or other self-sufficiency-related expenses shall not be counted in determining financial resources. Such assistance shall include, but not be limited to, school grants, scholarships, vocational rehabilitation payments, Job Training Partnership Act payments, income or assets described in section 68-1201, and education-related loans or other loans that are expected to be repaid; and

(4) Individuals and families shall pursue potential sources of economic support, including, but not limited to, unemployment compensation and child support.

Source: Laws 1994, LB 1224, § 26; Laws 1997, LB 864, § 15; Laws 2014, LB359, § 5.

Effective date July 18, 2014.

68-1735 Creating self-sufficiency contract and meeting work activity requirement; applicant under twenty years of age; activities authorized.

For purposes of creating the self-sufficiency contract and meeting the applicant's work activity requirement, an applicant who is under twenty years of age and is married or a single head of household is deemed to have met the work activity requirement in a month if he or she:

(1) Maintains satisfactory attendance during such month at secondary school, a general education development program, or the equivalent; or

(2) Participates in education directly related to employment for an average of at least twenty hours per week during such month. Education directly related to employment includes, but is not limited to, Adult Basic Education, English as a Second Language, and a general education development program.

Source: Laws 2012, LB507, § 2.

Termination date December 31, 2016.

68-1735.01 Creating self-sufficiency contract and meeting work activity requirement; applicant; activities authorized.

(1) For purposes of this section, target work rate means fifty percent less the caseload reduction credit submitted by the Nebraska Department of Health and Human Services to the United States Department of Health and Human Services for the fiscal year.

(2) For purposes of creating the self-sufficiency contract and meeting the applicant's work activity requirement, an applicant shall be deemed to have met the work activity requirement in a month if he or she is engaged in education directly related to employment for an average of at least twenty hours per week during such month. Education directly related to employment includes, but is not limited to, Adult Basic Education, English as a Second Language, and a general education development program.

(3) No state funds shall be used to carry out this section unless such state funds meet the definition of qualified state expenditures under the federal Temporary Assistance for Needy Families program, 42 U.S.C. 609(a)(7)(B)(i).

(4) If Nebraska's work participation rate under the federal Temporary Assistance for Needy Families program, 42 U.S.C. 601 et seq., does not exceed the

target work rate by ten percentage points in any month, the Department of Health and Human Services may suspend the requirements of subsection (2) of this section until the work participation rate exceeds the target work rate by ten percentage points for three consecutive months.

Source: Laws 2012, LB507, § 3; Laws 2013, LB240, § 1.
Termination date December 31, 2016.

68-1735.02 Department of Health and Human Services; report; contents.

The Department of Health and Human Services shall submit electronically an annual report to the Legislature on October 1 on the following:

(1) The number of persons on a quarterly basis participating in a self-sufficiency contract who are engaged in one of the following activities:

- (a) An associate degree program;
- (b) A vocational education program not leading to an associate degree;
- (c) Postsecondary education other than a program described in subdivision (1)(a) or (b) of this section;
- (d) Adult Basic Education;
- (e) English as a Second Language; or
- (f) A general education development program; and

(2) The number of persons participating in a self-sufficiency contract who obtain or maintain employment for six months, twelve months, eighteen months, and twenty-four months after such persons are no longer eligible for cash assistance due to obtaining employment.

Source: Laws 2012, LB507, § 4; Laws 2013, LB222, § 23.
Termination date December 31, 2016.

68-1735.03 Legislative intent.

It is the intent of the Legislature that the Department of Health and Human Services carry out the requirements of sections 68-1735 to 68-1735.02 within the limits of its annual appropriation.

Source: Laws 2012, LB507, § 5.
Termination date December 31, 2016.

68-1735.04 Sections; termination.

Sections 68-1735 to 68-1735.03 terminate on December 31, 2016.

Source: Laws 2012, LB507, § 6.

ARTICLE 18

ICF/DD REIMBURSEMENT PROTECTION ACT

Section	
68-1801.	Act, how cited.
68-1802.	Terms, defined.
68-1803.	Tax; rate; collection; report.
68-1804.	ICF/DD Reimbursement Protection Fund; created; use; allocation; investment; report.
68-1805.	State medicaid plan; application for amendment; tax; when due.
68-1806.	Collection of tax; discontinued; when; effect.
68-1806.01.	Tax; use.

Section	
68-1807.	Failure to pay tax; penalty.
68-1808.	Refund; procedure.
68-1809.	Rules and regulations.

68-1801 Act, how cited.

Sections 68-1801 to 68-1809 shall be known and may be cited as the ICF/DD Reimbursement Protection Act.

Source: Laws 2004, LB 841, § 2; Laws 2013, LB23, § 16.

68-1802 Terms, defined.

For purposes of the ICF/DD Reimbursement Protection Act:

- (1) Department means the Department of Health and Human Services;
- (2) Intermediate care facility for persons with developmental disabilities has the definition found in section 71-421;
- (3) Medical assistance program means the program established pursuant to the Medical Assistance Act; and
- (4) Net revenue means the revenue paid to an intermediate care facility for persons with developmental disabilities for resident care, room, board, and services less contractual adjustments and does not include revenue from sources other than operations, including, but not limited to, interest and guest meals.

Source: Laws 2004, LB 841, § 3; Laws 2006, LB 1248, § 72; Laws 2007, LB296, § 292; Laws 2013, LB23, § 17.

Cross References

Medical Assistance Act, see section 68-901.

68-1803 Tax; rate; collection; report.

(1) Each intermediate care facility for persons with developmental disabilities shall pay a tax equal to a percentage of its net revenue for the most recent State of Nebraska fiscal year. The percentage shall be (a) six percent prior to January 1, 2008, (b) five and one-half percent beginning January 1, 2008, through September 30, 2011, and (c) six percent beginning October 1, 2011.

(2) Taxes collected under this section shall be remitted to the State Treasurer for credit to the ICF/DD Reimbursement Protection Fund.

(3) Taxes collected pursuant to this section shall be reported on a separate line on the cost report of the intermediate care facility for persons with developmental disabilities, regardless of how such costs are reported on any other cost report or income statement. The department shall recognize such tax as an allowable cost within the state plan for reimbursement of intermediate care facilities for persons with developmental disabilities which participate in the medical assistance program. The tax shall be a direct pass-through and shall not be subject to cost limitations.

Source: Laws 2004, LB 841, § 4; Laws 2006, LB 1248, § 73; Laws 2007, LB292, § 2; Laws 2013, LB23, § 18.

68-1804 ICF/DD Reimbursement Protection Fund; created; use; allocation; investment; report.

(1) The ICF/DD Reimbursement Protection Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Interest and income earned by the fund shall be credited to the fund.

(2) Beginning July 1, 2014, the department shall use the ICF/DD Reimbursement Protection Fund, including the matching federal financial participation under Title XIX of the Social Security Act, as amended, for purposes of enhancing rates paid under the medical assistance program to intermediate care facilities for persons with developmental disabilities and for an annual contribution to community-based programs for persons with developmental disabilities as specified in subsection (4) of this section, exclusive of the reimbursement paid under the medical assistance program and any other state appropriations to intermediate care facilities for persons with developmental disabilities.

(3) For FY2011-12 through FY2013-14, proceeds from the tax imposed pursuant to section 68-1803 shall be remitted to the State Treasurer for credit to the ICF/DD Reimbursement Protection Fund for allocation as follows:

(a) First, fifty-five thousand dollars for administration of the fund;

(b) Second, the amount needed to reimburse intermediate care facilities for persons with developmental disabilities for the cost of the tax;

(c) Third, three hundred twelve thousand dollars for community-based services for persons with developmental disabilities;

(d) Fourth, six hundred thousand dollars or such lesser amount as may be available in the fund for non-state-operated intermediate care facilities for persons with developmental disabilities, in addition to any continuation appropriations percentage increase provided by the Legislature to nongovernmental intermediate care facilities for persons with developmental disabilities under the medical assistance program, subject to approval by the federal Centers for Medicare and Medicaid Services of the department's annual application amending the medicaid state plan reimbursement methodology for intermediate care facilities for persons with developmental disabilities; and

(e) Fifth, the remainder of the proceeds to the General Fund.

(4) For FY2014-15 and each fiscal year thereafter, the ICF/DD Reimbursement Protection Fund shall be used as follows:

(a) First, fifty-five thousand dollars to the department for administration of the fund;

(b) Second, payment to the intermediate care facilities for persons with developmental disabilities for the cost of the tax;

(c) Third, three hundred twelve thousand dollars, in addition to any federal medicaid matching funds, for payment to providers of community-based services for persons with developmental disabilities;

(d) Fourth, one million dollars to the General Fund; and

(e) Fifth, rebase rates under the medical assistance program in accordance with the medicaid state plan as defined in section 68-907. In calculating rates, the proceeds of the tax provided for in section 68-1803 and not utilized under subdivisions (a), (b), (c), and (d) of this subsection shall be used to enhance rates in non-state-operated intermediate care facilities for persons with devel-

opmental disabilities by increasing the annual inflation factor to the extent allowed by such proceeds and any funds appropriated by the Legislature.

(5) The Division of Medicaid and Long-Term Care of the Department of Health and Human Services shall report electronically, no later than December 1 of each year, to the Health and Human Services Committee of the Legislature and the Revenue Committee of the Legislature the amounts collected from each payer of the tax pursuant to section 68-1803 and the amount of each disbursement from the ICF/DD Reimbursement Protection Fund.

Source: Laws 2004, LB 841, § 5; Laws 2010, LB701, § 1; Laws 2013, LB23, § 19.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

68-1805 State medicaid plan; application for amendment; tax; when due.

(1) On or before July 1, 2004, the department shall submit an application to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services amending the state medicaid plan to provide for utilization of money in the ICF/DD Reimbursement Protection Fund to increase medicaid payments to intermediate care facilities for persons with developmental disabilities.

(2) The tax imposed under section 68-1803 is not due and payable until such amendment to the state medicaid plan is approved by the Centers for Medicare and Medicaid Services.

Source: Laws 2004, LB 841, § 6; Laws 2013, LB23, § 20.

68-1806 Collection of tax; discontinued; when; effect.

(1) Until July 1, 2014:

(a) Collection of the tax imposed by section 68-1803 shall be discontinued if:

(i) The amendment to the state medicaid plan described in section 68-1805 is disapproved by the Centers for Medicare and Medicaid Services;

(ii) The department reduces rates paid to intermediate care facilities for persons with developmental disabilities to an amount less than the rates effective September 1, 2003; or

(iii) The department or any other state agency attempts to utilize the money in the ICF/DD Reimbursement Protection Fund for any use other than uses permitted pursuant to the ICF/DD Reimbursement Protection Act; and

(b) If collection of the tax is discontinued as provided in subdivision (a) of this subsection, all money in the fund shall be returned to the intermediate care facilities for persons with developmental disabilities from which the tax was collected on the same basis as the tax was assessed.

(2) Beginning on July 1, 2014:

(a) The department shall discontinue collection of the tax provided for in section 68-1803:

(i) If federal financial participation to match the payments by intermediate care facilities for persons with developmental disabilities pursuant to section 68-1803 becomes unavailable under federal law or the rules and regulations of

the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services; or

(ii) If money in the ICF/DD Reimbursement Protection Fund is appropriated, transferred, or otherwise expended for any use other than uses permitted pursuant to the ICF/DD Reimbursement Protection Act; and

(b) If collection of the tax provided for in section 68-1803 is discontinued as provided in subdivision (a) of this subsection, the money in the ICF/DD Reimbursement Protection Fund shall be returned to the intermediate care facilities for persons with developmental disabilities from which the tax was collected on the same basis as collected.

Source: Laws 2004, LB 841, § 7; Laws 2013, LB23, § 21.

68-1806.01 Tax; use.

The department shall collect the tax provided for in section 68-1803 and remit the tax to the State Treasurer for credit to the ICF/DD Reimbursement Protection Fund. Beginning July 1, 2014, no proceeds from the tax provided for in section 68-1803, including the federal match, shall be placed in the General Fund unless otherwise provided in the ICF/DD Reimbursement Protection Act.

Source: Laws 2013, LB23, § 22.

68-1807 Failure to pay tax; penalty.

(1) An intermediate care facility for persons with developmental disabilities that fails to pay the tax required by section 68-1803 shall be subject to a penalty of five hundred dollars per day of delinquency. The total amount of the penalty assessed under this section shall not exceed five percent of the tax due from the intermediate care facility for persons with developmental disabilities for the year for which the tax is assessed.

(2) The department shall collect the penalties and remit them to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2004, LB 841, § 8; Laws 2007, LB296, § 293; Laws 2013, LB23, § 23.

68-1808 Refund; procedure.

An intermediate care facility for persons with developmental disabilities that has paid a tax that is not required by section 68-1803 may file a claim for refund with the department. The department may by rule and regulation establish procedures for filing and consideration of such claims.

Source: Laws 2004, LB 841, § 9; Laws 2013, LB23, § 24.

68-1809 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the ICF/DD Reimbursement Protection Act.

Source: Laws 2004, LB 841, § 10; Laws 2013, LB23, § 25.

ARTICLE 19

NURSING FACILITY QUALITY ASSURANCE ASSESSMENT ACT

Section

- 68-1901. Act, how cited.
- 68-1902. Definitions, where found.
- 68-1903. Bed-hold day, defined.
- 68-1904. Continuing care retirement community, defined.
- 68-1905. Department, defined.
- 68-1906. Gross inpatient revenue, defined.
- 68-1907. Hospital, defined.
- 68-1908. Life care contract, defined.
- 68-1909. Medical assistance program, defined.
- 68-1910. Medicare day, defined.
- 68-1911. Medicare upper payment limit, defined.
- 68-1912. Nursing facility, defined.
- 68-1913. Quality assurance assessment, defined.
- 68-1914. Resident day, defined.
- 68-1915. Skilled nursing facility, defined.
- 68-1916. Total resident days, defined.
- 68-1917. Quality assurance assessment; payment; computation.
- 68-1918. Providers exempt.
- 68-1919. Reduction of quality assurance assessment; when.
- 68-1920. Aggregate quality assurance assessment; limitation.
- 68-1921. Quality assurance assessment; payments; form.
- 68-1922. Department; collect quality assurance assessment; remit to State Treasurer.
- 68-1923. Quality assurance assessment; report; medicaid cost report; how treated.
- 68-1924. Underpayment or overpayment; notice.
- 68-1925. Failure to pay; penalty; waiver; when; withholding authorized; collection methods authorized.
- 68-1926. Nursing Facility Quality Assurance Fund; created; use; investment.
- 68-1927. Application for amendment to medicaid state plan; approval; effect; resubmission of waiver application.
- 68-1928. Department; discontinue collection of quality assurance assessments; when; return of money.
- 68-1929. Aggrieved party; hearing; petition.
- 68-1930. Rules and regulations.

68-1901 Act, how cited.

Sections 68-1901 to 68-1930 shall be known and may be cited as the Nursing Facility Quality Assurance Assessment Act.

Source: Laws 2011, LB600, § 1.

68-1902 Definitions, where found.

For purposes of the Nursing Facility Quality Assurance Assessment Act, the definitions found in sections 68-1903 to 68-1916 apply.

Source: Laws 2011, LB600, § 2.

68-1903 Bed-hold day, defined.

Bed-hold day means a day during which a bed is kept open pursuant to the bed-hold policy of the nursing facility or skilled nursing facility which permits a resident to return to the facility and resume residence in the facility after a transfer to a hospital or therapeutic leave.

Source: Laws 2011, LB600, § 3.

68-1904 Continuing care retirement community, defined.

Continuing care retirement community means an operational entity or related organization which, under a life care contract, provides a continuum of services, including, but not limited to, independent living, assisted-living, nursing facility, and skilled nursing facility services within the same or a contiguous municipality as defined in section 18-2410.

Source: Laws 2011, LB600, § 4.

68-1905 Department, defined.

Department means the Department of Health and Human Services.

Source: Laws 2011, LB600, § 5.

68-1906 Gross inpatient revenue, defined.

Gross inpatient revenue means the revenue paid to a nursing facility or skilled nursing facility for inpatient resident care, room, board, and services less contractual adjustments, bad debt, and revenue from sources other than operations, including, but not limited to, interest, guest meals, gifts, and grants.

Source: Laws 2011, LB600, § 6.

68-1907 Hospital, defined.

Hospital has the meaning found in section 71-419.

Source: Laws 2011, LB600, § 7.

68-1908 Life care contract, defined.

Life care contract means a contract between a continuing care retirement community and a resident of such community or his or her legal representative which:

(1) Includes each of the following express promises:

(a) The community agrees to provide services at any level along the continuum of care levels offered by the community;

(b) The base room fee will not increase as a resident transitions among levels of care, excluding any services or items upon which both parties initially agreed; and

(c) If the resident outlives and exhausts resources to pay for services, the community will continue to provide services at a reduced price or free of charge to the resident, excluding any payments from medicare, the medical assistance program, or a private insurance policy for which the resident is eligible and the community is certified or otherwise qualified to receive; and

(2) Requires the resident to agree to pay an entry fee to the community and to remain in the community for a minimum length of time subject to penalties against the entry fee.

Source: Laws 2011, LB600, § 8.

68-1909 Medical assistance program, defined.

Medical assistance program means the medical assistance program established pursuant to the Medical Assistance Act.

Source: Laws 2011, LB600, § 9.

Cross References

Medical Assistance Act, see section 68-901.

68-1910 Medicare day, defined.

Medicare day means any day of resident stay funded by medicare as the payment source and includes a day funded under Medicare Part A, under a Medicare Advantage or special needs plan, or under medicare hospice.

Source: Laws 2011, LB600, § 10.

68-1911 Medicare upper payment limit, defined.

Medicare upper payment limit means the limitation established by 42 C.F.R. 447.272 establishing a maximum amount of payment for services under the medical assistance program to nursing facilities, skilled nursing facilities, and hospitals.

Source: Laws 2011, LB600, § 11.

68-1912 Nursing facility, defined.

Nursing facility has the meaning found in section 71-424.

Source: Laws 2011, LB600, § 12.

68-1913 Quality assurance assessment, defined.

Quality assurance assessment means the assessment imposed under section 68-1917.

Source: Laws 2011, LB600, § 13.

68-1914 Resident day, defined.

Resident day means the calendar day in which care is provided to an individual resident of a nursing facility or skilled nursing facility that is not reimbursed under medicare, including the day of admission but not including the day of discharge, unless the dates of admission and discharge occur on the same day, in which case the resulting number of resident days is one resident day.

Source: Laws 2011, LB600, § 14.

68-1915 Skilled nursing facility, defined.

Skilled nursing facility has the meaning found in section 71-429.

Source: Laws 2011, LB600, § 15.

68-1916 Total resident days, defined.

Total resident days means the total number of residents residing in the nursing facility or skilled nursing facility between July 1 and June 30, multiplied by the number of days each such resident resided in that nursing facility or skilled nursing facility. If a resident is admitted and discharged on the same day, the resident shall be considered to be a resident for that day.

Source: Laws 2011, LB600, § 16.

68-1917 Quality assurance assessment; payment; computation.

Except for facilities which are exempt under section 68-1918 and facilities referred to in section 68-1919, each nursing facility or skilled nursing facility licensed under the Health Care Facility Licensure Act shall pay a quality assurance assessment based on total resident days, including bed-hold days, less medicare days, for the purpose of improving the quality of nursing facility or skilled nursing facility care in this state. The assessment shall be three dollars and fifty cents for each resident day for the preceding calendar quarter. The assessment in the aggregate shall not exceed the amount stated in section 68-1920.

Source: Laws 2011, LB600, § 17.

Cross References

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

68-1918 Providers exempt.

The department shall exempt the following providers from the quality assurance assessment:

- (1) State-operated veterans homes listed in section 80-315;
- (2) Nursing facilities and skilled nursing facilities with twenty-six or fewer licensed beds; and
- (3) Continuing care retirement communities.

Source: Laws 2011, LB600, § 18.

68-1919 Reduction of quality assurance assessment; when.

The department shall reduce the quality assurance assessment for either certain high-volume medicaid nursing facilities or skilled nursing facilities with high patient volumes to meet the redistribution tests in 42 C.F.R. 433.68(e)(2). Under this section, the assessment shall be based on total resident days, including bed-hold days, less medicare days, for the purpose of improving the quality of nursing facility or skilled nursing facility care in this state.

Source: Laws 2011, LB600, § 19.

68-1920 Aggregate quality assurance assessment; limitation.

The aggregate quality assurance assessment shall not exceed the lower of the amount necessary to accomplish the uses specified in section 68-1926 or the maximum amount of gross inpatient revenue that may be assessed pursuant to the indirect guarantee threshold as established pursuant to 42 C.F.R. 433.68(f)(3)(i). The aggregate quality assurance assessment shall be imposed on a per-nonmedicare-day basis.

Source: Laws 2011, LB600, § 20.

68-1921 Quality assurance assessment; payments; form.

Each nursing facility or skilled nursing facility shall pay the quality assurance assessment to the department on a quarterly basis after the medical assistance payment rates of the facility are adjusted pursuant to section 68-1926. The department shall prepare and distribute a form on which a nursing facility or skilled nursing facility shall calculate and report the quality assurance assessment. A nursing facility or skilled nursing facility shall submit the completed

form with the quality assurance assessment no later than thirty days following the end of each calendar quarter.

Source: Laws 2011, LB600, § 21.

68-1922 Department; collect quality assurance assessment; remit to State Treasurer.

The department shall collect the quality assurance assessment and remit the assessment to the State Treasurer for credit to the Nursing Facility Quality Assurance Fund. No proceeds from the quality assurance assessment, including the federal match, shall be placed in the General Fund unless otherwise provided in the Nursing Facility Quality Assurance Assessment Act.

Source: Laws 2011, LB600, § 22.

68-1923 Quality assurance assessment; report; medicaid cost report; how treated.

A nursing facility or skilled nursing facility shall report the quality assurance assessment on a separate line of the medicaid cost report of the nursing facility or skilled nursing facility. The quality assurance assessment shall be treated as a separate component in developing rates paid to nursing facilities or skilled nursing facilities and shall not be included with existing rate components. In developing a rate component for the quality assurance assessment, the assessment shall be treated as a direct pass-through to each nursing facility and skilled nursing facility, retroactive to July 1, 2011. The quality assurance assessment shall not be subject to any cost limitation or revenue offset.

Source: Laws 2011, LB600, § 23.

68-1924 Underpayment or overpayment; notice.

If the department determines that a nursing facility or skilled nursing facility has underpaid or overpaid the quality assurance assessment, the department shall notify the nursing facility or skilled nursing facility of the unpaid quality assurance assessment or refund due. Such payment or refund shall be due or refunded within thirty days after the issuance of the notice.

Source: Laws 2011, LB600, § 24.

68-1925 Failure to pay; penalty; waiver; when; withholding authorized; collection methods authorized.

(1) A nursing facility or skilled nursing facility that fails to pay the quality assurance assessment within the timeframe specified in section 68-1921 or 68-1924, whichever is applicable, shall pay, in addition to the outstanding quality assurance assessment, a penalty of one and one-half percent of the quality assurance assessment amount owed for each month or portion of a month that the assessment is overdue. If the department determines that good cause is shown for failure to pay the quality assurance assessment, the department shall waive the penalty or a portion of the penalty.

(2) If a quality assurance assessment has not been received by the department within thirty days following the quarter for which the assessment is due, the department shall withhold an amount equal to the quality assurance assessment and penalty owed from any payment due such nursing facility or skilled nursing facility under the medical assistance program.

(3) The quality assurance assessment shall constitute a debt due the state and may be collected by civil action, including, but not limited to, the filing of tax liens, and any other method provided for by law.

(4) The department shall remit any penalty collected pursuant to this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2011, LB600, § 25.

68-1926 Nursing Facility Quality Assurance Fund; created; use; investment.

(1) The Nursing Facility Quality Assurance Fund is created. Interest and income earned by the fund shall be credited to the fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The department shall use the Nursing Facility Quality Assurance Fund, including the matching federal financial participation under Title XIX of the federal Social Security Act, as amended, for the purpose of enhancing rates paid under the medical assistance program to nursing facilities and skilled nursing facilities, exclusive of the reimbursement paid under the medical assistance program, and, except for the purpose of reimbursement for retroactive compensation as provided in subsection (2) of section 68-1927 or reimbursement for rate enhancements in anticipation of receipt of quality assurance assessments or related matching federal financial participation pursuant to the Nursing Facility Quality Assurance Assessment Act, shall not use the fund to replace or offset existing state funds paid to nursing facilities and skilled nursing facilities for providing services under the medical assistance program.

(3) The Nursing Facility Quality Assurance Fund shall also be used as follows:

(a) To pay the department a reasonable administrative fee for enforcing and collecting the quality assurance assessment out of the Nursing Facility Quality Assurance Fund in addition to any federal medical assistance matching funds;

(b) To pay the share under the medical assistance program of a quality assurance assessment as an add-on to the rate under the medical assistance program for costs incurred by a nursing facility or skilled nursing facility. This rate add-on shall account for the cost incurred by a nursing facility or skilled nursing facility in paying the quality assurance assessment but only with respect to the pro rata portion of the assessment that correlates with the resident days in the nursing facility or skilled nursing facility that are attributable to residents funded by the medical assistance program;

(c) To rebase rates under the medical assistance program in accordance with the medicaid state plan as defined in section 68-907. In calculating rates, the proceeds of the quality assurance assessments and federal match not utilized under subdivisions (3)(a) and (b) of this section shall be used to enhance rates by increasing the annual inflation factor to the extent allowed by such proceeds and any funds appropriated by the Legislature; and

(d) To increase quality assurance payments to fund covered services to recipients of benefits from the medical assistance program within medicare upper payment limits as determined by the department following consultation with nursing facilities and skilled nursing facilities.

Source: Laws 2011, LB600, § 26.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

68-1927 Application for amendment to medicaid state plan; approval; effect; resubmission of waiver application.

(1) On or before September 30, 2011, or after that date if allowable by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services, the Nebraska Department of Health and Human Services shall submit an application to the Centers for Medicare and Medicaid Services amending the medicaid state plan as defined in section 68-907 by requesting a waiver of the uniformity requirement pursuant to 42 C.F.R. 433.68(e) to exempt certain facilities from the quality assurance assessment and to permit other facilities to pay the quality assurance assessment at lower rates.

(2) The quality assurance assessment is not due and payable until an amendment to the medicaid state plan which increases the rates paid to nursing facilities and skilled nursing facilities is approved by the Centers for Medicare and Medicaid Services and the nursing facilities and skilled nursing facilities have been compensated retroactively for the increased rate for services pursuant to section 68-1926.

(3) If the waiver requested under this section is not approved by the Centers for Medicare and Medicaid Services, the department may resubmit the waiver application to address any changes required by the Centers for Medicare and Medicaid Services in the rejection of such application, including the classes of facilities exempt and the rates or amounts for quality assurance assessments, if such changes do not exceed the authority and purposes of the Nursing Facility Quality Assurance Assessment Act.

Source: Laws 2011, LB600, § 27.

68-1928 Department; discontinue collection of quality assurance assessments; when; return of money.

(1) The department shall discontinue collection of the quality assurance assessments:

(a) If the waiver requested pursuant to section 68-1927 or the medicaid state plan amendment reflecting the payment rates in section 68-1926 is given final disapproval by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services;

(b) If, in any fiscal year, the state appropriates funds for nursing facility or skilled nursing facility rates at an amount that reimburses nursing facilities or skilled nursing facilities at a lesser percentage than the median percentage appropriated to other classes of providers of covered services under the medical assistance program;

(c) If money in the Nursing Facility Quality Assurance Fund is appropriated, transferred, or otherwise expended for any use other than uses permitted pursuant to the Nursing Facility Quality Assurance Assessment Act; or

(d) If federal financial participation to match the quality assurance assessments made under the act becomes unavailable under federal law. In such case, the department shall terminate the collection of the quality assurance assessments beginning on the date the federal statutory, regulatory, or interpretive change takes effect.

(2) If collection of the quality assurance assessment is discontinued as provided in this section, the money in the Nursing Facility Quality Assurance Fund shall be returned to the nursing facilities or skilled nursing facilities from which the quality assurance assessments were collected on the same basis as the assessments were assessed.

Source: Laws 2011, LB600, § 28.

68-1929 Aggrieved party; hearing; petition.

A nursing facility or skilled nursing facility aggrieved by an action of the department under the Nursing Facility Quality Assurance Assessment Act may file a petition for hearing with the director of the Division of Medicaid and Long-Term Care of the department. The hearing shall be conducted pursuant to the Administrative Procedure Act and rules and regulations of the department.

Source: Laws 2011, LB600, § 29.

Cross References

Administrative Procedure Act, see section 84-920.

68-1930 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the Nursing Facility Quality Assurance Assessment Act.

Source: Laws 2011, LB600, § 30.

ARTICLE 20

CHILDREN'S HEALTH AND TREATMENT ACT

Section

- 68-2001. Act, how cited.
- 68-2002. Purposes of act.
- 68-2003. Terms, defined.
- 68-2004. Department; report; contents.
- 68-2005. Rules and regulations.

68-2001 Act, how cited.

Sections 68-2001 to 68-2005 shall be known and may be cited as the Children's Health and Treatment Act.

Source: Laws 2012, LB1063, § 1.

68-2002 Purposes of act.

The purposes of the Children's Health and Treatment Act are to:

(1) Require that the guidelines and criteria that the Department of Health and Human Services utilizes to determine medical necessity for services under the medical assistance program be published by the department on its web site and web sites of its contractors for managed care and administrative services. The treating guidelines and criteria shall be referenced specifically to providers when utilized as a determination of medical necessity under the medical assistance program. Treating guidelines and criteria in effect on July 19, 2012, shall be published on such web sites within thirty days after July 19, 2012. Notice of changes to treating guidelines and criteria shall be given to providers and time for public comment provided at least sixty days prior to implementation of such changes; and

(2) Require that the department collect and report on authorization and denial rates for behavioral health services for children under nineteen years of age.

Source: Laws 2012, LB1063, § 2.

68-2003 Terms, defined.

For purposes of the Children's Health and Treatment Act:

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

(2) Medical assistance program means the program established pursuant to section 68-903.

Source: Laws 2012, LB1063, § 3.

68-2004 Department; report; contents.

The department shall report to the Health and Human Services Committee of the Legislature on utilization controls, including, but not limited to, the rates of initial service authorizations, reauthorizations subsequent to initial service authorizations, and denials for behavioral health services for children under nineteen years of age. The first report shall be due on October 1, 2012, and shall contain such rates of initial service authorizations, reauthorizations subsequent to initial service authorizations, and denials for behavioral health services for children under nineteen years of age for the first three quarters of 2012. Thereafter, on January 1, April 1, and July 1 of each year, the department shall report electronically such rates of initial service authorizations, reauthorizations subsequent to initial service authorizations, and denials for behavioral health services for children under nineteen years of age for the previous calendar quarter.

Source: Laws 2012, LB1063, § 4; Laws 2013, LB222, § 24.

68-2005 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the Children's Health and Treatment Act. On and after April 1, 2013, the department shall not apply medical necessity criteria to determine medical necessity for children under nineteen years of age that have not been adopted and promulgated as rules and regulations pursuant to the Administrative Procedure Act.

Source: Laws 2012, LB1063, § 5.

Cross References

Administrative Procedure Act, see section 84-920.



CHAPTER 69

PERSONAL PROPERTY

Article.

2. Pawnbrokers and Junk Dealers. 69-206.
4. Scrap Metal Recycling. 69-401 to 69-409.
5. Reduced Cigarette Ignition Propensity Act. 69-502, 69-503.
13. Disposition of Unclaimed Property.
 - (a) Uniform Disposition of Unclaimed Property Act. 69-1301 to 69-1329.
21. Consumer Rental Purchase Agreements. 69-2103 to 69-2112.
23. Disposition of Personal Property Landlord and Tenant Act. 69-2304, 69-2308.
24. Guns.
 - (a) Handguns. 69-2402 to 69-2423.
 - (c) Concealed Handgun Permit Act. 69-2427 to 69-2449.
27. Tobacco. 69-2702 to 69-2711.

ARTICLE 2

PAWNBROKERS AND JUNK DEALERS

Section

69-206. Pawned or secondhand goods; restrictions on disposition; jewelry defined.

69-206 Pawned or secondhand goods; restrictions on disposition; jewelry defined.

No personal property received or purchased by any pawnbroker, dealer in secondhand goods, or junk dealer, shall be sold or permitted to be taken from the place of business of such person for fourteen days after the copy of the card or ledger entry required to be delivered to the police department or sheriff's office shall have been delivered as required by section 69-205. Secondhand jewelry shall not be destroyed, damaged, or in any manner defaced for a period of fourteen days after the time of its purchase or receipt. For purposes of this section, jewelry shall mean any ornament which is intended to be worn on or about the body and which is made in whole or in part of any precious metal, including gold, silver, platinum, copper, brass, or pewter.

All property accepted as collateral security or purchased by a pawnbroker shall be kept segregated from all other property in a separate area for a period of forty-eight hours after its receipt or purchase, except that valuable articles may be kept in a safe with other property if grouped according to the day of purchase or receipt. Notwithstanding the provisions of this section, a pawnbroker may return any property to the person pawning the same after the expiration of such forty-eight-hour period or when permitted by the chief of police, sheriff, or other authorized law enforcement officer.

Source: Laws 1899, c. 10, § 6, p. 66; R.S.1913, § 541; C.S.1922, § 433; C.S.1929, § 69-206; R.S.1943, § 69-206; Laws 1981, LB 44, § 6; Laws 2012, LB941, § 1.

ARTICLE 4
SCRAP METAL RECYCLING

Section

- 69-401. Terms, defined.
69-404. Secondary metals recycler; limitations on payment.
69-406.01. Manhole cover or sewer grate; purchase or receipt; limitations; payment.
69-407. Exemptions.
69-408. Violation; penalty.
69-409. Sections; how construed.

69-401 Terms, defined.

For purposes of sections 69-401 to 69-409:

(1) Regulated metals property means catalytic converters, all nonferrous metal except gold and silver, manhole covers, sewer grates, or metal beer kegs, including those kegs made of stainless steel; and

(2) Secondary metals recycler means any person, firm, or corporation in this state that:

(a) Is engaged in the business of gathering or obtaining regulated metals property that has served its original economic purpose; or

(b) Is in the business of or has facilities for performing the manufacturing process by which regulated metals property is converted into raw material products consisting of prepared grades and having an existing or potential economic value by methods including, but not limited to, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metals, but not including the exclusive use of hand tools.

Source: Laws 2008, LB766, § 1; Laws 2012, LB1049, § 1.

69-404 Secondary metals recycler; limitations on payment.

No secondary metals recycler shall purchase regulated metals property for cash consideration unless the purchase total is not more than twenty-five dollars. Purchases made from the same person within a four-hour period shall be considered a single transaction. Payment shall be made payable only to the individual named on the identification presented pursuant to section 69-402. Payment for copper and catalytic converters shall be by check, and if the purchase total for copper is more than one hundred dollars, the check shall be sent by United States mail, postage prepaid.

Source: Laws 2008, LB766, § 4; Laws 2012, LB1049, § 3.

69-406.01 Manhole cover or sewer grate; purchase or receipt; limitations; payment.

No secondary metals recycler shall purchase or receive any manhole cover or sewer grate except from (1) an authorized representative of the political subdivision that owns the manhole cover or sewer grate as is evidenced by the stamping or engraving on the cover or grate or (2) a third party who has a legitimate bill-of-sale, letter of authorization, or similar approval from the political subdivision evidencing the third party's right to possess and sell the cover or grate. Payment for a manhole cover or sewer grate shall be by draft or check and sent by United States mail, postage prepaid, to the official address of

the finance department of such political subdivision or to the third-party seller. Such draft or check shall be made payable only to the political subdivision or to the third-party seller.

Source: Laws 2012, LB1049, § 2.

69-407 Exemptions.

Sections 69-401 to 69-409 do not apply to:

(1) Purchases of regulated metals property from a manufacturing, industrial, or other commercial vendor that generates or sells regulated metals property in the ordinary course of its business;

(2) The collection or purchase of regulated metals property in the form of beverage or food cans; or

(3) Recycling or neighborhood cleanup programs contracted or sponsored by the state or any political subdivision.

Source: Laws 2008, LB766, § 7; Laws 2012, LB1049, § 4.

69-408 Violation; penalty.

Any person violating any of the provisions of sections 69-401 to 69-409 is guilty of a Class II misdemeanor.

Source: Laws 2008, LB766, § 8; Laws 2012, LB1049, § 5.

69-409 Sections; how construed.

Nothing in sections 69-401 to 69-409 shall be construed to abrogate or affect the provisions of any lawful rule, regulation, resolution, ordinance, or statute which is more restrictive than sections 69-401 to 69-409.

Source: Laws 2008, LB766, § 9; Laws 2012, LB1049, § 6.

ARTICLE 5

REDUCED CIGARETTE IGNITION PROPENSITY ACT

Section

69-502. Terms, defined.

69-503. Cigarettes; testing; requirements; performance standard; manufacturer; duties; civil penalty; State Fire Marshal; powers and duties.

69-502 Terms, defined.

For purposes of the Reduced Cigarette Ignition Propensity Act:

(1) Agent means any person authorized by the Tax Commissioner to purchase and affix stamps or cigarette tax meter impressions on packages of cigarettes under sections 77-2601 to 77-2615;

(2) Cigarette has the same meaning as in section 77-2601;

(3) Consumer testing means an assessment of cigarettes that is conducted by a manufacturer, or under the control or direction of a manufacturer, for the purpose of evaluating consumer acceptance of the cigarettes;

(4) Manufacturer means:

(a) Any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that such manufacturer

intends to sell in this state, including cigarettes intended to be sold in the United States through an importer;

(b) The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

(c) Any entity that becomes a successor of an entity described in subdivision (4)(a) or (b) of this section;

(5) Quality control and quality assurance program means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. Such a program ensures that the testing repeatability remains within the required repeatability values stated in section 69-503 for all test trials used to certify cigarettes in accordance with the Reduced Cigarette Ignition Propensity Act;

(6) Repeatability means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent of the time;

(7) Retail dealer means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products;

(8) Sale means any transfer for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means whatsoever;

(9) Sell means to sell or to offer or agree to do the same; and

(10) Wholesale dealer means any person, other than a manufacturer, who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale and any person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in, at, or upon premises owned or occupied by any other person.

Source: Laws 2009, LB198, § 2; Laws 2011, LB590, § 3.

69-503 Cigarettes; testing; requirements; performance standard; manufacturer; duties; civil penalty; State Fire Marshal; powers and duties.

(1) Except as provided in subsection (7) of this section, no cigarettes may be sold or offered for sale in this state or offered for sale or sold to persons located in this state unless the cigarettes have been tested in accordance with the following test method and meet the performance standard specified in this section, a written certification has been filed by the manufacturer with the State Fire Marshal in accordance with section 69-504, and the cigarettes have been marked in accordance with section 69-505. Testing shall be as follows:

(a) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials Standard E2187-04, Standard Test Method for Measuring the Ignition Strength of Cigarettes;

(b) Testing shall be conducted on ten layers of filter paper;

(c) No more than twenty-five percent of the cigarettes tested in a test trial in accordance with this subsection shall exhibit full-length burns. Forty replicate tests shall comprise a complete test trial for each cigarette tested;

(d) The performance standard required by this subsection shall only be applied to a complete test trial;

(e) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization or other comparable accreditation standard required by the State Fire Marshal;

(f) Laboratories conducting testing in accordance with this subsection shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19;

(g) This subsection does not require additional testing if cigarettes are tested consistent with the Reduced Cigarette Ignition Propensity Act for any other purpose; and

(h) Testing performed or sponsored by the State Fire Marshal to determine a cigarette's compliance with the performance standard required by this section shall be conducted in accordance with this subsection.

(2) Each cigarette listed in a certification submitted pursuant to section 69-504 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least fifteen millimeters from the lighting end and ten millimeters from the filter end of the tobacco column, or ten millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

(3) A manufacturer of a cigarette that the State Fire Marshal determines cannot be tested in accordance with the test method prescribed in subdivision (1)(a) of this section shall propose a test method and performance standard for the cigarette to the State Fire Marshal. If the State Fire Marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in the Reduced Cigarette Ignition Propensity Act and the State Fire Marshal finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, then the State Fire Marshal shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state, unless the State Fire Marshal demonstrates a reasonable basis why the alternative test should not be accepted under the act. All other applicable requirements of this section shall apply to the manufacturer.

(4) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years and shall make copies of these reports available to the State Fire Marshal and the Attorney General upon written request. Any manufacturer who fails to make copies of these reports available within sixty days after receiving a written request shall be subject to a civil penalty not to exceed ten thousand dollars for each day after the sixtieth day that the manufacturer does not make such copies available.

(5) The State Fire Marshal may adopt a subsequent American Society of Testing and Materials Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding that such subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with the American Society of Testing and Materials Standard E2187-04 and the performance standard in subdivision (1)(c) of this section.

(6) The State Fire Marshal shall review the effectiveness of this section and report every three years to the Legislature the State Fire Marshal's findings and, if appropriate, recommendations for legislation to improve the effectiveness of this section. The report and legislative recommendations shall be submitted electronically no later than November 15 each three-year period.

(7) The requirements of subsection (1) of this section shall not prohibit wholesale or retail dealers from selling their existing inventory of cigarettes on or after January 1, 2010, if the wholesale or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to such date and if the wholesale or retail dealer can establish that the inventory was purchased prior to such date in comparable quantity to the inventory purchased during the same period of the prior year.

(8) The Reduced Cigarette Ignition Propensity Act shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes as such standards existed on January 1, 2009.

Source: Laws 2009, LB198, § 3; Laws 2012, LB782, § 98.

ARTICLE 13

DISPOSITION OF UNCLAIMED PROPERTY

(a) UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

Section

- | | |
|-------------|---|
| 69-1301. | Terms, defined. |
| 69-1307.06. | Military medal; report and delivery to State Treasurer. |
| 69-1307.07. | Military medals; State Treasurer; duties. |
| 69-1317. | Abandoned property; trust funds; record; professional finder's fee; information withheld; when; proceeds of sale; transfers; Unclaimed Property Cash Fund; created; investment. |
| 69-1329. | Act, how cited. |

(a) UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

69-1301 Terms, defined.

As used in the Uniform Disposition of Unclaimed Property Act unless the context otherwise requires:

(a) Banking organization means any bank, trust company, savings bank, industrial bank, land bank, or safe deposit company.

(b) Business association means any corporation, joint-stock company, business trust, partnership, limited liability company, or association for business purposes of two or more individuals, but does not include a public corporation.

(c) Financial organization means any savings and loan association, building and loan association, credit union, cooperative bank, or investment company, doing business in this state.

(d) General-use prepaid card means a plastic card or other electronic payment device usable with multiple, unaffiliated sellers of goods or services.

(e) Holder means any person in possession of property subject to the act belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to the act.

(f) Life insurance corporation means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not limited to, endowments and annuities.

(g) Military medal means any decoration or award that may be presented or awarded to a member of a unit of the United States Armed Forces or National Guard.

(h) Owner means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to the act, or his or her legal representative.

(i) Person means any individual, business association, governmental or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(j) Utility means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

Source: Laws 1969, c. 611, § 1, p. 2478; Laws 1992, Third Spec. Sess., LB 26, § 3; Laws 1993, LB 121, § 414; Laws 2003, LB 131, § 34; Laws 2006, LB 173, § 1; Laws 2012, LB819, § 1.

69-1307.06 Military medal; report and delivery to State Treasurer.

Any military medal that is removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box on which the lease or rental period has expired due to nonpayment of rental charges or other reasons shall not be sold or otherwise disposed of but shall be retained by the holder for the lessee of the box until reported and delivered to the State Treasurer in accordance with this section. Such report shall be made in compliance with section 69-1310. The holder shall, at the time of filing the report and with the report, deliver the military medal to the State Treasurer for safekeeping by the State Treasurer in accordance with section 69-1307.07.

Source: Laws 2012, LB819, § 2.

69-1307.07 Military medals; State Treasurer; duties.

The State Treasurer, upon receiving military medals, shall hold and maintain the military medals for ten years or until the original owner or the owners' respective heirs or beneficiaries can be identified and the military medals returned. After ten years, the State Treasurer may designate a veteran's organization, an awarding agency, or a governmental entity as the custodian of the military medals. Once the military medals are turned over to a veteran's

organization, an awarding agency, or a governmental entity, the State Treasurer will no longer be responsible for the safekeeping of the military medals.

Source: Laws 2012, LB819, § 3.

69-1317 Abandoned property; trust funds; record; professional finder's fee; information withheld; when; proceeds of sale; transfers; Unclaimed Property Cash Fund; created; investment.

(a)(1) Except as otherwise provided in this subdivision, all funds received under the Uniform Disposition of Unclaimed Property Act, including the proceeds from the sale of abandoned property under section 69-1316, shall be deposited by the State Treasurer in a separate trust fund from which he or she shall make prompt payment of claims allowed pursuant to the act and payment of any auditing expenses associated with the receipt of abandoned property. All funds received under section 69-1307.05 shall be deposited by the State Treasurer in a separate life insurance corporation demutualization trust fund, which is hereby created, from which he or she shall make prompt payment of claims regarding such funds allowed pursuant to the act. Transfers from the separate life insurance corporation demutualization trust fund to the General Fund may be made at the direction of the Legislature. Before making the deposit he or she shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the abandoned property, the name and last-known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection during business hours.

The record shall not be subject to public inspection or available for copying, reproduction, or scrutiny by commercial or professional locators of property presumed abandoned who charge any service or finders' fee until twenty-four months after the names from the holders' reports have been published or officially disclosed. Records concerning the social security number, date of birth, and last-known address of an owner shall be treated as confidential and subject to the same confidentiality as tax return information held by the Department of Revenue, except that the Auditor of Public Accounts shall have unrestricted access to such records.

A professional finders' fee shall be limited to ten percent of the total dollar amount of the property presumed abandoned. To claim any such fee, the finder shall disclose to the owner the nature, location, and value of the property, provide notice of when such property was reported to the State Treasurer, and provide notice that the property may be claimed by the owner from the State Treasurer free of charge. To claim any such fee if the property has not yet been abandoned, the finder shall disclose to the owner the nature, location, and value of the property, provide notice of when such property will be reported to the State Treasurer, if known, and provide notice that, upon receipt of the property by the State Treasurer, such property may be claimed by the owner from the State Treasurer free of charge.

(2) The unclaimed property records of the State Treasurer, the unclaimed property reports of holders, and the information derived by an unclaimed property examination or audit of the records of a person or otherwise obtained by or communicated to the State Treasurer may be withheld from the public. Any record or information that may be withheld under the laws of this state or

of the United States when in the possession of such a person may be withheld when revealed or delivered to the State Treasurer. Any record or information that is withheld under any law of another state when in the possession of that other state may be withheld when revealed or delivered by the other state to the State Treasurer.

Information withheld from the general public concerning any aspect of unclaimed property shall only be disclosed to an apparent owner of the property or to the escheat, unclaimed, or abandoned property administrators or officials of another state if that other state accords substantially reciprocal privileges to the State Treasurer.

(b)(1) On or after October 6, 1992, the State Treasurer shall periodically transfer any balance in excess of an amount not to exceed five hundred thousand dollars from the separate trust fund to the General Fund no less frequently than on or before November 1 and May 1 of each year, except that the total amount of all such transfers shall not exceed five million dollars.

(2) On or before November 1 of each year, the State Treasurer shall transfer any balance in excess of an amount not to exceed five hundred thousand dollars from the separate trust fund to the permanent school fund.

(c) Before making any deposit to the credit of the permanent school fund or the General Fund, the State Treasurer may deduct (1) any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) reasonable service charges and place such funds in the Unclaimed Property Cash Fund which is hereby created. Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Unclaimed Property 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 1969, c. 611, § 17, p. 2488; Laws 1971, LB 648, § 2; Laws 1977, LB 305, § 7; Laws 1978, LB 754, § 1; Laws 1986, LB 212, § 2; Laws 1992, Third Spec. Sess., LB 26, § 17; Laws 1994, LB 1048, § 8; Laws 1994, LB 1049, § 1; Laws 1994, LB 1066, § 63; Laws 1995, LB 7, § 67; Laws 1997, LB 57, § 1; Laws 2003, LB 424, § 4; Laws 2009, LB432, § 1; Laws 2012, LB1026, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

69-1329 Act, how cited.

Sections 69-1301 to 69-1329 shall be known and may be cited as the Uniform Disposition of Unclaimed Property Act.

Source: Laws 1969, c. 611, § 29, p. 2490; Laws 1992, Third Spec. Sess., LB 26, § 21; Laws 1994, LB 1048, § 9; Laws 2003, LB 424, § 5; Laws 2006, LB 173, § 5; Laws 2006, LB 771, § 2; Laws 2012, LB819, § 4.

ARTICLE 21

CONSUMER RENTAL PURCHASE AGREEMENTS

Section

- 69-2103. Terms, defined.
69-2104. Lessor; disclosures required.
69-2112. Advertisement; requirements.

69-2103 Terms, defined.

For purposes of the Consumer Rental Purchase Agreement Act:

(1) Advertisement means a commercial message in any medium that aids, promotes, or assists directly or indirectly a consumer rental purchase agreement but does not include in-store merchandising aids such as window signs and ceiling banners;

(2) Cash price means the price at which the lessor would have sold the property to the consumer for cash on the date of the consumer rental purchase agreement for the property;

(3) Consumer means a natural person who rents property under a consumer rental purchase agreement;

(4) Consumer rental purchase agreement means an agreement which is for the use of property by a consumer primarily for personal, family, or household purposes, which is for an initial period of four months or less, whether or not there is any obligation beyond the initial period, which is automatically renewable with each payment, and which permits the consumer to become the owner of the property. A consumer rental purchase agreement in compliance with the act shall not be construed to be a lease or agreement which constitutes a credit sale as defined in 12 C.F.R. 226.2(a)(16), as such regulation existed on January 1, 2011, and 15 U.S.C. 1602(g), as such section existed on January 1, 2011, or a lease which constitutes a consumer lease as defined in 12 C.F.R. 213.2(e), as such regulation existed on January 1, 2011. Consumer rental purchase agreement does not include:

(a) Any lease for agricultural, business, or commercial purposes;

(b) Any lease made to an organization;

(c) A lease or agreement which constitutes an installment sale or installment contract as defined in section 45-335;

(d) A security interest as defined in subdivision (35) of section 1-201, Uniform Commercial Code; and

(e) A home solicitation sale as defined in section 69-1601;

(5) Consummation means the occurrence of an event which causes a consumer to become contractually obligated on a consumer rental purchase agreement;

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

(7) Lease payment means a payment to be made by the consumer for the right of possession and use of the property for a specific lease period but does not include taxes imposed on such payment;

(8) Lease period means a week, month, or other specific period of time, during which the consumer has the right to possess and use the property after paying the lease payment and applicable taxes for such period;

(9) Lessor means a person who in the ordinary course of business operates a commercial outlet which regularly leases, offers to lease, or arranges for the leasing of property under a consumer rental purchase agreement;

(10) Property means any property that is not real property under the laws of this state when made available for a consumer rental purchase agreement; and

(11) Total of payments to acquire ownership means the total of all charges imposed by the lessor and payable by the consumer as a condition of acquiring ownership of the property. Total of payments to acquire ownership includes lease payments and any initial nonrefundable administrative fee or required delivery charge but does not include taxes, late charges, reinstatement fees, or charges for optional products or services.

Source: Laws 1989, LB 681, § 3; Laws 1993, LB 111, § 2; Laws 2001, LB 641, § 1; Laws 2005, LB 570, § 3; Laws 2011, LB76, § 6.

69-2104 Lessor; disclosures required.

(1) Before entering into any consumer rental purchase agreement, the lessor shall disclose to the consumer the following items as applicable:

(a) A brief description of the leased property sufficient to identify the property to the consumer and lessor;

(b) The number, amount, and timing of all payments included in the total of payments to acquire ownership;

(c) The total of payments to acquire ownership;

(d) A statement that the consumer will not own the property until the consumer has paid the total of payments to acquire ownership plus applicable taxes;

(e) A statement that the total of payments to acquire ownership does not include other charges such as taxes, late charges, reinstatement fees, or charges for optional products or services the consumer may have elected to purchase and that the consumer should see the rental purchase agreement for an explanation of these charges;

(f) A statement that the consumer is responsible for the fair market value, remaining rent, early purchase option amount, or cost of repair of the property, whichever is less, if it is lost, stolen, damaged, or destroyed;

(g) A statement indicating whether the property is new or used. A statement that indicates that new property is used shall not be a violation of the Consumer Rental Purchase Agreement Act;

(h) A statement of the cash price of the property. When the agreement involves a lease for two or more items, a statement of the aggregate cash price of all items shall satisfy the requirement of this subdivision;

(i) The total amount of the initial payments required to be paid before consummation of the agreement or delivery of the property, whichever occurs later, and an itemization of the components of the initial payment, including any initial nonrefundable administrative fee or delivery charge, lease payment, taxes, or fee or charge for optional products or services;

(j) A statement clearly summarizing the terms of the consumer's options to purchase, including a statement that at any time after the first periodic payment is made the consumer may acquire ownership of the property by tendering an amount which may not exceed fifty-five percent of the difference

between the total of payments to acquire ownership and the total of lease payments the consumer has paid on the property at that time;

(k) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility and a statement that if any part of a manufacturer's warranty covers the leased property at the time the consumer acquires ownership of the property, such warranty shall be transferred to the consumer if allowed by the terms of the warranty; and

(l) The date of the transaction and the names of the lessor and the consumer.

(2) With respect to matters specifically governed by the Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., as such act existed on January 1, 2011, compliance with such act shall satisfy the requirements of this section.

(3) Subsection (1) of this section shall not apply to a lessor who complies with the disclosure requirements of the Consumer Credit Protection Act, 15 U.S.C. 1667a, as such section existed on January 1, 2011, with respect to a consumer rental purchase agreement entered into with a consumer.

Source: Laws 1989, LB 681, § 4; Laws 2001, LB 641, § 2; Laws 2011, LB76, § 7.

69-2112 Advertisement; requirements.

(1) Any advertisement for a consumer rental purchase agreement which refers to or states the amount of any payment or the right to acquire ownership for any specific item shall also state clearly and conspicuously the following if applicable:

(a) That the transaction advertised is a consumer rental purchase agreement;

(b) The total of payments to acquire ownership; and

(c) That the consumer acquires no ownership rights until the total of payments to acquire ownership is paid.

(2) Any owner or employee of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

(3) Subsection (1) of this section shall not apply to an advertisement which does not refer to a specific item of property, which does not refer to or state the amount of any payment, or which is published in the yellow pages of a telephone directory or any similar directory of business.

(4) With respect to matters specifically governed by the Consumer Credit Protection Act, 15 U.S.C. 1601 et seq., as such act existed on January 1, 2011, compliance with such act shall satisfy the requirements of this section.

Source: Laws 1989, LB 681, § 12; Laws 2001, LB 641, § 7; Laws 2011, LB76, § 8.

ARTICLE 23

DISPOSITION OF PERSONAL PROPERTY LANDLORD AND TENANT ACT

Section

69-2304. Notice; statement required.

69-2308. Sale of personal property; when required; notice of sale; requirements; disposition of proceeds.

69-2304 Notice; statement required.

A notice given pursuant to section 69-2303 shall contain one of the following statements, as appropriate:

(1) "If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property is sold and the costs of storage, advertising, and sale are deducted, the remaining money will be turned over to the State Treasurer pursuant to the Uniform Disposition of Unclaimed Property Act. You may claim the remaining money from the office of the State Treasurer as provided in such act."; or

(2) "Because this property is believed to be worth less than one thousand dollars, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated in this notice.".

Source: Laws 1991, LB 36, § 4; Laws 2010, LB712, § 44.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

69-2308 Sale of personal property; when required; notice of sale; requirements; disposition of proceeds.

(1) If the personal property is not released pursuant to section 69-2307, it shall be sold at public sale by competitive bidding, except that if the landlord reasonably believes that the total resale value of the property not released is less than one thousand dollars, he or she may retain such property for his or her own use or dispose of it in any manner he or she chooses. At such time as the decision to sell or to retain is made, any locked trunk, valise, box, or other container shall be opened, if practicable, with as little damage as possible, and its contents evaluated. Nothing in this section shall be construed to preclude the landlord or the tenant from bidding on the property at the public sale. The successful bidder's title shall be subject to ownership rights, liens, and security interests which have priority by law.

(2) Notice of the time and place of the public sale shall be given by advertisement of the sale published once a week for two consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted no fewer than ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale. The sale shall be held at the nearest suitable place to the place where the personal property is held or stored. The advertisement shall include a description of the goods, the name of the former tenant, and the time and place of the sale. The sale shall take place no sooner than ten days after the first publication. The last publication shall be no less than five days before the sale is to be held. Notice of sale may be published before the last of the dates specified for taking possession of the property in any notice given pursuant to section 69-2303.

(3) The notice of the sale shall describe the property to be sold in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the property, but the limitation of

liability provided by section 69-2309 shall not release the landlord from any liability arising from the disposition of property not described in the notice.

(4) After deduction of the reasonable costs of storage, advertising, and sale, any proceeds of the sale not claimed by the former tenant, an owner other than such tenant, or another person having an interest in the proceeds shall, not later than thirty days after the date of sale, be remitted to the State Treasurer for disposition pursuant to the Uniform Disposition of Unclaimed Property Act. The former tenant, other owner, or other person having interest in the proceeds may claim the proceeds by complying with the act. If the State Treasurer pays the proceeds or any part thereof to a claimant, neither the State Treasurer nor any employee thereof shall be liable to any other claimant as to the amount paid.

Source: Laws 1991, LB 36, § 8; Laws 2010, LB712, § 45.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

ARTICLE 24

GUNS

(a) HANDGUNS

Section

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|----------------------------------|---|
| 69-2402. | Terms, defined. |
| 69-2403. | Sale, lease, rental, and transfer; certificate required; exceptions. |
| 69-2409. | Automated criminal history files; legislative intent; system implementation; Nebraska State Patrol; superintendent; duties; purchase, lease, rental, or transfer; election. |
| 69-2409.01. | Data base; created; disclosure; limitation; liability; prohibited act; violation; penalty; report; contents. |
| 69-2423. | Nebraska State Patrol; annual report; contents. |
| (c) CONCEALED HANDGUN PERMIT ACT | |
| 69-2427. | Act, how cited. |
| 69-2431. | Fingerprinting; criminal history record information check. |
| 69-2433. | Applicant; requirements. |
| 69-2435. | Permitholder; continuing requirements; return of permit; when. |
| 69-2436. | Permit; period valid; fee; renewal; fee. |
| 69-2439. | Permit; application for revocation; prosecution; fine; costs. |
| 69-2443. | Violations; penalties; revocation of permit. |
| 69-2449. | Information to permitholder regarding lost or stolen handgun or firearm. |

(a) HANDGUNS

69-2402 Terms, defined.

For purposes of sections 69-2401 to 69-2425:

(1) Antique handgun or pistol means any handgun or pistol, including those with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898 and any replica of such a handgun or pistol if such replica (a) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (b) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade;

(2) Criminal history record check includes a check of the criminal history records of the Nebraska State Patrol and a check of the Federal Bureau of Investigation's National Instant Criminal Background Check System;

(3) Firearm-related disability means a person is not permitted to (a) purchase, possess, ship, transport, or receive a firearm under either state or federal law, (b) obtain a certificate to purchase, lease, rent, or receive transfer of a handgun under section 69-2404, or (c) obtain a permit to carry a concealed handgun under the Concealed Handgun Permit Act; and

(4) 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.

Source: Laws 1991, LB 355, § 25; Laws 1996, LB 1055, § 2; Laws 2006, LB 1227, § 1; Laws 2011, LB512, § 2.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

69-2403 Sale, lease, rental, and transfer; certificate required; exceptions.

(1) Except as provided in this section and section 69-2409, a person shall not purchase, lease, rent, or receive transfer of a handgun until he or she has obtained a certificate in accordance with section 69-2404. Except as provided in this section and section 69-2409, a person shall not sell, lease, rent, or transfer a handgun to a person who has not obtained a certificate.

(2) The certificate shall not be required if:

(a) The person acquiring the handgun is a licensed firearms dealer under federal law;

(b) The handgun is an antique handgun;

(c) The person acquiring the handgun is authorized to do so on behalf of a law enforcement agency;

(d) The transfer is a temporary transfer of a handgun and the transferee remains (i) in the line of sight of the transferor or (ii) within the premises of an established shooting facility;

(e) The transfer is between a person and his or her spouse, sibling, parent, child, aunt, uncle, niece, nephew, or grandparent;

(f) The person acquiring the handgun is a holder of a valid permit under the Concealed Handgun Permit Act; or

(g) The person acquiring the handgun is a peace officer as defined in section 69-2429.

Source: Laws 1991, LB 355, § 2; Laws 2010, LB817, § 4.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

69-2409 Automated criminal history files; legislative intent; system implementation; Nebraska State Patrol; superintendent; duties; purchase, lease, rental, or transfer; election.

(1) It is the intent of the Legislature that the Nebraska State Patrol implement an expedited program of upgrading Nebraska's automated criminal history files to be utilized for, among other law enforcement purposes, an instant criminal history record check on handgun purchasers when buying a handgun from a licensed importer, manufacturer, or dealer so that such instant criminal history record check may be implemented as soon as possible on or after January 1, 1995.

(2) The patrol's automated arrest and conviction records shall be reviewed annually by the Superintendent of Law Enforcement and Public Safety who shall report the status of such records within thirty days of such review to the Governor and the Clerk of the Legislature. The report submitted to the Clerk of the Legislature shall be submitted electronically. The instant criminal history record check system shall be implemented by the patrol on or after January 1, 1995, when, as determined by the Superintendent of Law Enforcement and Public Safety, eighty-five percent of the Nebraska arrest and conviction records since January 1, 1965, available to the patrol are included in the patrol's automated system. Not less than thirty days prior to implementation and enforcement of the instant check system, the patrol shall send written notice to all licensed importers, manufacturers, and dealers outlining the procedures and toll-free number described in sections 69-2410 to 69-2423.

(3) Upon implementation of the instant criminal history record check system, a person who desires to purchase, lease, rent, or receive transfer of a handgun from a licensed importer, manufacturer, or dealer may elect to obtain such handgun either under sections 69-2401, 69-2403 to 69-2408, and 69-2409.01 or under sections 69-2409.01 and 69-2410 to 69-2423.

Source: Laws 1991, LB 355, § 8; Laws 1996, LB 1055, § 5; Laws 2012, LB782, § 99.

69-2409.01 Data base; created; disclosure; limitation; liability; prohibited act; violation; penalty; report; contents.

(1) For purposes of sections 69-2401 to 69-2425, the Nebraska State Patrol shall be furnished with only such information as may be necessary for the sole purpose of determining whether an individual is disqualified from purchasing or possessing a handgun pursuant to state law or is subject to the disability provisions of 18 U.S.C. 922(d)(4) and (g)(4). Such information shall be furnished by the Department of Health and Human Services. The clerks of the various courts shall furnish to the Department of Health and Human Services and Nebraska State Patrol, as soon as practicable but within thirty days after an order of commitment or discharge is issued or after removal of firearm-related disabilities pursuant to section 71-963, all information necessary to set up and maintain the data base required by this section. This information shall include (a) information regarding those persons who are currently receiving mental health treatment pursuant to a commitment order of a mental health board or who have been discharged, (b) information regarding those persons who have been committed to treatment pursuant to section 29-3702, and (c) information regarding those persons who have had firearm-related disabilities removed pursuant to section 71-963. The mental health board shall notify the Department of Health and Human Services and the Nebraska State Patrol when such disabilities have been removed. The Department of Health and Human Services shall also maintain in the data base a listing of persons committed to treatment pursuant to section 29-3702. To ensure the accuracy of the data base, any information maintained or disclosed under this subsection shall be updated, corrected, modified, or removed, as appropriate, and as soon as practicable, from any data base that the state or federal government maintains and makes available to the National Instant Criminal Background Check System. The procedures for furnishing the information shall guarantee that no information is released beyond what is necessary for purposes of this section.

(2) In order to comply with sections 69-2401 and 69-2403 to 69-2408 and this section, the Nebraska State Patrol shall provide to the chief of police or sheriff of an applicant's place of residence or a licensee in the process of a criminal history record check pursuant to section 69-2411 only the information regarding whether or not the applicant is disqualified from purchasing or possessing a handgun.

(3) Any person, agency, or mental health board participating in good faith in the reporting or disclosure of records and communications under this section is immune from any liability, civil, criminal, or otherwise, that might result by reason of the action.

(4) Any person who intentionally causes the Nebraska State Patrol to request information pursuant to this section without reasonable belief that the named individual has submitted a written application under section 69-2404 or has completed a consent form under section 69-2410 shall be guilty of a Class II misdemeanor in addition to other civil or criminal liability under state or federal law.

(5) The Nebraska State Patrol and the Department of Health and Human Services shall report electronically to the Clerk of the Legislature on a biannual basis the following information about the data base: (a) The number of total records of persons unable to purchase or possess firearms because of disqualification or disability shared with the National Instant Criminal Background Check System; (b) the number of shared records by category of such persons; (c) the change in number of total shared records and change in number of records by category from the previous six months; (d) the number of records existing but not able to be shared with the National Instant Criminal Background Check System because the record was incomplete and unable to be accepted by the National Instant Criminal Background Check System; and (e) the number of hours or days, if any, during which the data base was unable to share records with the National Instant Criminal Background Check System and the reason for such inability. The report shall also be published on the web sites of the Nebraska State Patrol and the Department of Health and Human Services.

Source: Laws 1996, LB 1055, § 1; Laws 1997, LB 307, § 112; Laws 2011, LB512, § 3; Laws 2014, LB699, § 6.
Effective date April 3, 2014.

69-2423 Nebraska State Patrol; annual report; contents.

The Nebraska State Patrol shall provide electronically an annual report to the Judiciary Committee of the Legislature which includes the number of inquiries made pursuant to sections 69-2410 to 69-2423 for the prior calendar year, the number of such inquiries resulting in a determination that the potential buyer or transferee was prohibited from receipt or possession of a handgun pursuant to state or federal law, the estimated costs of administering such sections, the number of instances in which a person requested amendment of the record pertaining to such person pursuant to section 69-2414, and the number of instances in which a county court issued an order directing the patrol to amend a record.

Source: Laws 1991, LB 355, § 22; Laws 2012, LB782, § 100.

(c) CONCEALED HANDGUN PERMIT ACT

69-2427 Act, how cited.

Sections 69-2427 to 69-2449 shall be known and may be cited as the Concealed Handgun Permit Act.

Source: Laws 2006, LB 454, § 1; Laws 2009, LB430, § 9; Laws 2010, LB817, § 5.

69-2431 Fingerprinting; criminal history record information check.

In order to insure an applicant's initial compliance with sections 69-2430 and 69-2433, the applicant for a permit to carry a concealed handgun shall be fingerprinted by the Nebraska State Patrol and a check made of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol. In order to insure continuing compliance with sections 69-2430 and 69-2433 and compliance for renewal pursuant to section 69-2436, a check shall be made of a permit holder's criminal history record information through the National Instant Criminal Background Check System.

Source: Laws 2006, LB 454, § 5; Laws 2010, LB817, § 7.

69-2433 Applicant; requirements.

An applicant shall:

- (1) Be at least twenty-one years of age;
- (2) Not be prohibited from purchasing or possessing a handgun by 18 U.S.C. 922, as such section existed on January 1, 2005;
- (3) Possess the same powers of eyesight as required under section 60-4,118 for a Class O operator's license. If an applicant does not possess a current Nebraska motor vehicle operator's license, the applicant may present a current optometrist's or ophthalmologist's statement certifying the vision reading obtained when testing the applicant. If such certified vision reading meets the vision requirements prescribed by section 60-4,118 for a Class O operator's license, the vision requirements of this subdivision shall have been met;
- (4) Not have been convicted of a felony under the laws of this state or under the laws of any other jurisdiction;
- (5) Not have been convicted of a misdemeanor crime of violence under the laws of this state or under the laws of any other jurisdiction within the ten years immediately preceding the date of application;
- (6) Not have been found in the previous ten years to be a mentally ill and dangerous person under the Nebraska Mental Health Commitment Act or a similar law of another jurisdiction or not be currently adjudged mentally incompetent;
- (7)(a) Have been a resident of this state for at least one hundred eighty days. For purposes of this section, resident does not include an applicant who maintains a residence in another state and claims that residence for voting or tax purposes except as provided in subdivision (b) or (c) of this subdivision;
- (b) If an applicant is a member of the United States Armed Forces, such applicant shall be considered a resident of this state for purposes of this section after he or she has been stationed at a military installation in this state pursuant

to permanent duty station orders even though he or she maintains a residence in another state and claims that residence for voting or tax purposes; or

(c) If an applicant is a new Nebraska resident and possesses a valid permit to carry a concealed handgun issued by his or her previous state of residence that is recognized by this state pursuant to section 69-2448, such applicant shall be considered a resident of this state for purposes of this section;

(8) Not have had a conviction of any law of this state relating to firearms, unlawful use of a weapon, or controlled substances or of any similar laws of another jurisdiction within the ten years preceding the date of application. This subdivision does not apply to any conviction under Chapter 37 or under any similar law of another jurisdiction, except for a conviction under section 37-509, 37-513, or 37-522 or under any similar law of another jurisdiction;

(9) Not be on parole, probation, house arrest, or work release;

(10) Be a citizen of the United States; and

(11) Provide proof of training.

Source: Laws 2006, LB 454, § 7; Laws 2009, LB430, § 11; Laws 2010, LB817, § 8; Laws 2011, LB512, § 4; Laws 2012, LB807, § 2.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

69-2435 Permitholder; continuing requirements; return of permit; when.

A permitholder shall continue to meet the requirements of section 69-2433 during the time he or she holds the permit, except as provided in subsection (4) of section 69-2443. If, during such time, a permitholder does not continue to meet one or more of the requirements, the permitholder shall return his or her permit to the Nebraska State Patrol for revocation. If a permitholder does not return his or her permit, the permitholder is subject to having his or her permit revoked under section 69-2439.

Source: Laws 2006, LB 454, § 9; Laws 2012, LB807, § 3.

69-2436 Permit; period valid; fee; renewal; fee.

(1) A permit to carry a concealed handgun is valid throughout the state for a period of five years after the date of issuance. The fee for issuing a permit is one hundred dollars.

(2) The Nebraska State Patrol shall renew a person's permit to carry a concealed handgun for a renewal period of five years, subject to continuing compliance with the requirements of section 69-2433, except as provided in subsection (4) of section 69-2443. The renewal fee is fifty dollars, and renewal may be applied for up to four months before expiration of a permit to carry a concealed handgun.

(3) The applicant shall submit the fee with the application to the Nebraska State Patrol. The fee shall be remitted to the State Treasurer for credit to the Nebraska State Patrol Cash Fund.

(4) On or before June 30, 2007, the Nebraska State Patrol shall journal entry, as necessary, all current fiscal year expenses and revenue, including investment income, from the Public Safety Cash Fund under the Concealed Handgun

Permit Act and recode them against the Nebraska State Patrol Cash Fund and its program appropriation.

Source: Laws 2006, LB 454, § 10; Laws 2007, LB322, § 17; Laws 2012, LB807, § 4.

69-2439 Permit; application for revocation; prosecution; fine; costs.

(1) Any peace officer having probable cause to believe that a permitholder is no longer in compliance with one or more requirements of section 69-2433, except as provided in subsection (4) of section 69-2443, shall bring an application for revocation of the permit to be prosecuted as provided in subsection (2) of this section.

(2) It is the duty of the county attorney or his or her deputy of the county in which such permitholder resides to prosecute a case for the revocation of a permit to carry a concealed handgun brought pursuant to subsection (1) of this section. In case the county attorney refuses or is unable to prosecute the case, the duty to prosecute shall be upon the Attorney General or his or her assistant.

(3) The case shall be prosecuted as a civil case, and the permit shall be revoked upon a showing by a preponderance of the evidence that the permitholder does not meet one or more of the requirements of section 69-2433, except as provided in subsection (4) of section 69-2443.

(4) A person who has his or her permit revoked under this section may be fined up to one thousand dollars and shall be charged with the costs of the prosecution. The money collected under this subsection as an administrative fine shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2006, LB 454, § 13; Laws 2012, LB807, § 5.

69-2443 Violations; penalties; revocation of permit.

(1) A permitholder who violates subsection (1) or (2) of section 69-2440 or section 69-2441 or 69-2442 is guilty of a Class III misdemeanor for the first violation and a Class I misdemeanor for any second or subsequent violation.

(2) A permitholder who violates subsection (3) of section 69-2440 is guilty of a Class I misdemeanor.

(3) A permitholder convicted of a violation of section 69-2440 or 69-2442 may also have his or her permit revoked.

(4) A permitholder convicted of a violation of section 69-2441 that occurred on property owned by the state or any political subdivision of the state may also have his or her permit revoked. A permitholder convicted of a violation of section 69-2441 that did not occur on property owned by the state or any political subdivision of the state shall not have his or her permit revoked for a first offense but may have his or her permit revoked for any second or subsequent offense.

Source: Laws 2006, LB 454, § 17; Laws 2007, LB97, § 2; Laws 2012, LB807, § 6.

69-2449 Information to permitholder regarding lost or stolen handgun or firearm.

The Nebraska State Patrol shall inform each permitholder, upon the issuance or renewal of a permit to carry a concealed handgun, that if a handgun, or other firearm, owned by such permitholder is lost or stolen, the permitholder should notify his or her county sheriff or local police department of that fact.

Source: Laws 2010, LB817, § 6.

ARTICLE 27

TOBACCO

Section

- 69-2702. Tobacco product manufacturer; terms, defined.
- 69-2703. Tobacco product manufacturer; requirements to sell within the state.
- 69-2705. Terms, defined.
- 69-2706. Tobacco product manufacturer; certification; contents; Tax Commissioner; powers and duties; directory; prohibited acts.
- 69-2707. Nonresident or foreign nonparticipating manufacturer; agent for service of process.
- 69-2707.01. Nonparticipating manufacturers; bond; amount; failure to make escrow deposits; execution upon bond.
- 69-2708. Stamping agent; duties; Tax Commissioner; Attorney General; powers.
- 69-2708.01. Stamping agent; responsible for escrow deposits; when; liability; calculation.
- 69-2709. Revocation or suspension of stamping agent license; civil penalty; termination of license; grounds; violations; penalties; effect of termination; eligibility for reinstatement; directory license; termination; procedure; contraband; actions to enjoin; criminal penalty; remedies cumulative.
- 69-2710. Removal from directory; procedure.
- 69-2710.01. Report; contents.
- 69-2710.02. License of stamping agent; termination; grounds; cure; notice; reinstatement; removal from directory; grounds; cure; notice; procedure.
- 69-2710.03. Rules and regulations.
- 69-2711. Conflict of laws; how treated.

69-2702 Tobacco product manufacturer; terms, defined.

For purposes of this section and section 69-2703:

(1) Adjusted for inflation means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement;

(2) Affiliate means a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this subdivision, the terms owns, is owned, and ownership means ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term person means an individual, a partnership, a committee, an association, a corporation, or any other organization or group of persons;

(3) Allocable share means allocable share as that term is defined in the Master Settlement Agreement;

(4) Cigarette means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (b) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a

cigarette; or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subdivision (a) of this subdivision. The term cigarette includes roll-your-own tobacco (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition, nine-hundredths of an ounce of roll-your-own tobacco shall constitute one individual cigarette;

(5) Days means calendar days unless specified otherwise;

(6) Importer means any person in the United States to whom non-federal-excise-tax-paid cigarettes manufactured in a foreign country are shipped or consigned, any person who removes cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse, or any person who smuggles or otherwise unlawfully brings cigarettes into the United States;

(7) Indian country means (a) all land in this state within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of this state, and (c) all Indian allotments in this state, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments;

(8) Indian tribe means any Indian tribe, band, nation, or other organized group or community that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians under the laws of the United States;

(9) Master Settlement Agreement means the settlement agreement entered into on November 23, 1998, between the state and specific United States tobacco product manufacturers and related documents to such agreement;

(10) Qualified escrow fund means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer that places such funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with subdivision (2)(b) of section 69-2703;

(11) Released claims means released claims as that term is defined in the Master Settlement Agreement;

(12) Releasing parties means releasing parties as that term is defined in the Master Settlement Agreement;

(13) Tobacco product manufacturer means an entity that after April 29, 1999, directly and not exclusively through any affiliate:

(a) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except when such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes

specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(b) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(c) Becomes a successor of an entity described in subdivision (13)(a) or (13)(b) of this section.

The term tobacco product manufacturer does not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of subdivisions (13)(a) through (13)(c) of this section; and

(14) Units sold means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, in packs required to bear a stamp pursuant to section 77-2603 or 77-2603.01 or, in the case of roll-your-own tobacco, on which a tax is due pursuant to section 77-4008.

Source: Laws 1999, LB 574, § 1; Laws 2003, LB 572, § 8; Laws 2011, LB590, § 4.

69-2703 Tobacco product manufacturer; requirements to sell within the state.

Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after April 29, 1999, shall do one of the following:

(1) Become a participating manufacturer, as that term is defined in section II(jj) of the Master Settlement Agreement, and generally perform its financial obligations under the Master Settlement Agreement; or

(2)(a) Place into a qualified escrow fund on a quarterly basis, no later than thirty days after the end of each calendar quarter in which sales are made, the following amounts, as such amounts are adjusted for inflation:

(i) 1999: \$.0094241 per unit sold after April 29, 1999;

(ii) 2000: \$.0104712 per unit sold;

(iii) For each of the years 2001 and 2002: \$.0136125 per unit sold;

(iv) For each of the years 2003, 2004, 2005, and 2006: \$.0167539 per unit sold; and

(v) For the year 2007 and each year thereafter: \$.0188482 per unit sold.

(b) A tobacco product manufacturer that places funds into escrow pursuant to subdivision (2)(a) of this section shall receive the interest or other appreciation on such funds as earned. Such funds shall be released from escrow only under the following circumstances:

(i) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subdivision (2)(b)(i) in the order in which they were placed into escrow and only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer;

(iii) To the extent not released from escrow under subdivision (2)(b)(i) or (2)(b)(ii) of this section, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow; or

(iv) An Indian tribe may seek release of escrow deposited pursuant to this section on cigarettes sold on an Indian tribe's Indian country to its tribal members pursuant to an agreement entered into between the state and the Indian tribe pursuant to section 77-2602.06. Amounts the state collects on a bond under section 69-2707.01 shall not be subject to release under this section.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to subdivision (2) of this section shall annually certify to the Attorney General that it is in compliance with subdivision (2) of this section. The Attorney General may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any calendar quarter to place into escrow the funds required under this section shall:

(i) Be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this section. The court, upon a finding of a violation of subdivision (2) of this section, may impose a civil penalty in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent of the original amount improperly withheld from escrow;

(ii) In the case of a knowing violation, be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this section. The court, upon a finding of a knowing violation of subdivision (2) of this section, may impose a civil penalty in an amount not to exceed fifteen percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent of the original amount improperly withheld from escrow. Such civil penalty shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska; and

(iii) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two years.

(d) An importer shall be jointly and severally liable for escrow deposits due from a nonparticipating manufacturer with respect to nonparticipating manufacturer cigarettes that it imported and which were then sold in this state, except as provided for by an agreement entered into pursuant to section 77-2602.06.

(e) Each failure to make a quarterly deposit required under this section constitutes a separate violation.

Source: Laws 1999, LB 574, § 2; Laws 2004, LB 944, § 1; Laws 2011, LB590, § 5.

69-2705 Terms, defined.

For purposes of sections 69-2704 to 69-2711:

(1) Brand family means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, menthol, lights, kings, and 100s, and includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, or recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes;

(2) Cigarette has the same meaning as in section 69-2702;

(3) Cigarette inputs means any machinery or other component parts typically used in the manufacture of cigarettes, including, without limitation, tobacco whether processed or unprocessed, cigarette papers and tubes, cigarette filters or any component parts intended for use in the making of cigarette filters, and any machinery typically used in the making of cigarettes;

(4) Days has the same meaning as in section 69-2702;

(5) Directory means the directory compiled by the Tax Commissioner under section 69-2706 or, in the case of references to another state's directory, the directory compiled under the similar law in that other state;

(6) Importer has the same meaning as in section 69-2702;

(7) Indian country has the same meaning as in section 69-2702;

(8) Indian tribe has the same meaning as in section 69-2702;

(9) Master Settlement Agreement has the same meaning as in section 69-2702;

(10) Nonparticipating manufacturer means any tobacco product manufacturer that is not a participating manufacturer;

(11) Nonparticipating manufacturer cigarettes means cigarettes (a) of a brand family that is not included in the certification of a participating manufacturer under subsection (1) of section 69-2706, (b) that are subject to the escrow requirement under subdivision (2) of section 69-2703 because the participating manufacturer in whose certification the brand family is included is not generally performing its financial obligations under the Master Settlement Agreement, or (c) of a brand family of a participating manufacturer that is not otherwise listed on the directory under subsection (2) of section 69-2706;

(12) Package means any pack or other container on which a state stamp or tribal stamp could be applied consistent with and as required by sections 69-2701 to 69-2711 and 77-2601 to 77-2622 that contains one or more individual cigarettes for sale. Nothing in such sections shall alter any other applicable requirement with respect to the minimum number of cigarettes that may be contained in a pack or other container of cigarettes. References to package do not include a container of multiple packages;

(13) Participating manufacturer has the same meaning as in section II(jj) of the Master Settlement Agreement;

(14) Person means any natural person, trustee, company, partnership, corporation, or other legal entity, including any Indian tribe or instrumentality thereof;

(15) Purchase means any acquisition in any manner or by any means for any consideration. The term includes transporting or receiving product in connection with a purchase;

(16) Qualified escrow fund has the same meaning as in section 69-2702;

(17) Retailer includes retail dealers as defined in section 77-2601 or anyone who is licensed under sections 28-1420 to 28-1422;

(18) Sale or sell means any transfer, exchange, or barter in any manner or by any means for any consideration. Sale or sell includes distributing or shipping product in connection with a sale;

(19) Shortfall amount means the difference between (a) the full amount of the deposit required to be made by a nonparticipating manufacturer for a calendar quarter under section 69-2703 and (b) the sum of (i) any amounts precollected by a stamping agent and deposited into escrow for that calendar quarter on behalf of the nonparticipating manufacturer under section 69-2708.01, (ii) the amount deposited into escrow by the nonparticipating manufacturer for that calendar quarter under section 69-2703, (iii) any amounts deposited into escrow for that calendar quarter under subdivision (2)(d) of section 69-2703 by an importer on such nonparticipating manufacturer's cigarettes, and (iv) any amounts collected by the state for that calendar quarter under the bond posted by the nonparticipating manufacturer under section 69-2707.01. The shortfall amount, if any, for a nonparticipating manufacturer for a calendar quarter shall be calculated by the Attorney General within fifteen days following the date on which the state determines the amount it will collect on the bond posted by the nonparticipating manufacturer as provided in section 69-2707.01;

(20) Stamping agent means a person that is authorized to affix stamps to packages or other containers of cigarettes under section 77-2603 or 77-2603.01 or any person that is required to pay the tobacco tax imposed pursuant to section 77-4008 on roll-your-own cigarettes;

(21) Tax Commissioner means the Tax Commissioner of the State of Nebraska;

(22) Tobacco product manufacturer has the same meaning as in section 69-2702;

(23) Units sold has the same meaning as in section 69-2702; and

(24) Unstamped cigarettes means any cigarettes that are not contained in a package bearing a stamp required under section 77-2603 or 77-2603.01.

Source: Laws 2003, LB 572, § 2; Laws 2011, LB590, § 6.

69-2706 Tobacco product manufacturer; certification; contents; Tax Commissioner; powers and duties; directory; prohibited acts.

(1)(a) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the Tax Commissioner a certification to the Tax Commissioner and the Attorney General no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufac-

turer either is a participating manufacturer in compliance with subdivision (1) of section 69-2703 or is a nonparticipating manufacturer in full compliance with subdivision (2) of section 69-2703.

(b) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Tax Commissioner and the Attorney General.

(c) A nonparticipating manufacturer shall include in its certification (i) a list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year and (ii) a list of all of its brand families that have been sold in the state at any time during the current calendar year (A) indicating by an asterisk any brand family sold in the state during the preceding or current calendar year that is no longer being sold in the state as of the date of such certification and (B) identifying by name and address any other manufacturer of such brand families in the preceding calendar year. The nonparticipating manufacturer shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Tax Commissioner and the Attorney General.

(d) In the case of a nonparticipating manufacturer, such certification shall further certify:

(i) That such nonparticipating manufacturer is registered to do business in the state or has appointed an agent for service of process in Nebraska and provided notice thereof as required by section 69-2707;

(ii) That such nonparticipating manufacturer has established and continues to maintain a qualified escrow fund pursuant to a qualified escrow agreement that has been reviewed and approved by the Attorney General or has been submitted for review by the Attorney General;

(iii) That such nonparticipating manufacturer is in full compliance with subdivision (2) of section 69-2703 and this section and any rules and regulations adopted and promulgated pursuant thereto;

(iv)(A) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established such qualified escrow fund required pursuant to subdivision (2) of section 69-2703 and all rules and regulations adopted and promulgated pursuant thereto; (B) the account number of such qualified escrow fund and any subaccount number for the State of Nebraska; (C) the amount such nonparticipating manufacturer placed in such fund for cigarettes sold in the state during the preceding calendar year, the dates and amount of each such deposit, and such evidence or verification as may be deemed necessary by the Attorney General to confirm the foregoing; and (D) the amounts and dates of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from such fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to subdivision (2) of section 69-2703 and all rules and regulations adopted and promulgated pursuant thereto;

(v) That such nonparticipating manufacturer consents to be sued in the district courts of the State of Nebraska for purposes of the state (A) enforcing any provision of sections 69-2703 to 69-2711 and any rules and regulations

adopted and promulgated thereunder or (B) bringing a released claim as defined in section 69-2702; and

(vi) The information required to establish that such nonparticipating manufacturer has posted the appropriate bond or cash equivalent required under section 69-2707.01.

(e) A tobacco product manufacturer shall not include a brand family in its certification unless (i) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year in the volume and shares determined pursuant to the Master Settlement Agreement and (ii) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of subdivision (2) of section 69-2703. Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of section 69-2703.

(f) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of five years unless otherwise required by law to maintain them for a greater period of time.

(2) The Tax Commissioner shall develop, maintain, and make available for public inspection or publish on its web site a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (1) of this section and all brand families that are listed in such certifications, and:

(a) The Tax Commissioner shall not include or retain in such directory the name or brand families of any tobacco product manufacturer that has failed to provide the required certification or whose certification the commissioner determines is not in compliance with subsection (1) of this section unless the Tax Commissioner has determined that such violation has been cured to his or her satisfaction;

(b) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the Attorney General recommends and notifies the Tax Commissioner who concludes, in the case of a nonparticipating manufacturer, that (i) any escrow payment required pursuant to subdivision (2) of section 69-2703 for any period for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General or (ii) any outstanding final judgment, including interest thereon, for violations of section 69-2703 has not been fully satisfied for such brand family and such manufacturer;

(c) As a condition to being listed and having its brand families listed in the directory, a tobacco product manufacturer shall also (i) certify annually that such manufacturer or its importer holds a valid permit under 26 U.S.C. 5713 and provide a copy of such permit to the Tax Commissioner and the Attorney General, (ii) upon request of the Tax Commissioner or Attorney General, provide documentary proof that it is not in violation of subdivision (1) of

section 59-1520, and (iii) certify that it is in compliance with all reporting and registration requirements of 15 U.S.C. 376 and 376a;

(d) The Tax Commissioner shall update the directory no later than May 15 of each year to reflect certifications made on or before April 30 as required in subsection (1) of this section. The Tax Commissioner shall continuously update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of sections 69-2704 to 69-2711;

(e) The Tax Commissioner shall transmit by email or other practicable means to each stamping agent notice of any removal from the directory of any tobacco product manufacturer or brand family. Unless otherwise provided by agreement between the stamping agent and a tobacco product manufacturer, the stamping agent shall be entitled to a refund from a tobacco product manufacturer for any money paid by the stamping agent to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer still held by the stamping agent on the date of notice by the Tax Commissioner of the removal from the directory of that tobacco product manufacturer or the brand family or for any cigarettes returned to the stamping agent by its customers under subsection (8) of section 69-2709. The Tax Commissioner shall not restore to the directory the tobacco product manufacturer or the brand family until the tobacco product manufacturer has paid the stamping agent any refund due; and

(f) Every stamping agent shall provide and update as necessary an electronic mail address to the Tax Commissioner for the purpose of receiving any notifications as may be required by sections 69-2704 to 69-2711.

(3) The failure of the Tax Commissioner to provide notice of any intended removal from the directory as required under subdivision (2)(e) of this section or the failure of a stamping agent to receive such notice shall not relieve the stamping agent of its obligations under sections 69-2704 to 69-2711.

(4) It shall be unlawful for any person (a) to affix a Nebraska stamp pursuant to section 77-2603 to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory, (b) to affix a tribal stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory except as authorized by an agreement pursuant to section 77-2602.06, or (c) to sell, offer, or possess for sale in this state cigarettes of a tobacco product manufacturer or brand family in this state not included in the directory.

Source: Laws 2003, LB 572, § 3; Laws 2007, LB580, § 1; Laws 2011, LB590, § 7.

69-2707 Nonresident or foreign nonparticipating manufacturer; agent for service of process.

(1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory created in subsection (2) of section 69-2706, appoint and continually engage without interruption the services of an agent in Nebraska to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of sections 69-2703 to 69-2711, may be served in any manner authorized by law. Such

service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of such agent to the Tax Commissioner and Attorney General.

(2) The nonparticipating manufacturer shall provide notice to the Tax Commissioner and Attorney General thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the Tax Commissioner and Attorney General of the termination within five calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

(3) Any nonparticipating manufacturer whose products are sold in this state who has not appointed and engaged the services of an agent as required by this section shall be deemed to have appointed the Secretary of State as its agent for service of process. The appointment of the Secretary of State as agent shall not satisfy the condition precedent required in subsection (1) of this section to have the nonparticipating manufacturer's brand families included or retained in the directory.

Source: Laws 2003, LB 572, § 4; Laws 2007, LB580, § 2; Laws 2011, LB590, § 8.

69-2707.01 Nonparticipating manufacturers; bond; amount; failure to make escrow deposits; execution upon bond.

(1) All nonparticipating manufacturers shall post a bond or its cash equivalent for the benefit of the state which is subject to execution under subsection (3) of this section. The bond shall be posted by corporate surety located within the United States, or the cash equivalent of the bond shall be posted by the nonparticipating manufacturer in an account approved by the state. The bond or its cash equivalent shall be posted and evidence of such posting shall be provided to the Tax Commissioner at least ten days in advance of each calendar quarter as a condition to the nonparticipating manufacturer and its brand families being included in the directory for that quarter.

(2) The amount of the bond shall be determined as follows:

(a) Unless subdivision (c) of this subsection is applicable, for a nonparticipating manufacturer or its affiliates which have been listed on any state's directory for at least three years or for any nonparticipating manufacturer whose sales are authorized pursuant to an agreement under section 77-2602.06, the amount of the bond required shall be twenty-five thousand dollars;

(b) Unless subdivision (c) of this subsection is applicable, for a nonparticipating manufacturer or its affiliates which have not been listed on any state's directory for at least three years, the amount of the bond required shall be fifty thousand dollars; and

(c) For a nonparticipating manufacturer or its affiliates which have failed, in the past three years, to make a full and timely escrow deposit due under section 69-2703, unless the failure was not knowing or intentional and was promptly cured upon notice, or for any nonparticipating manufacturer or its affiliates which were involuntarily removed from any state's directory, unless the remov-

al was determined to have been erroneous or illegal, the amount of the bond required shall be the greater of (i) fifty thousand dollars or (ii) the greatest amount of escrow owed by the nonparticipating manufacturer or its predecessor in any calendar year in Nebraska within the preceding five calendar years.

(3) If a nonparticipating manufacturer that posted a bond has failed to make, or have made on its behalf by an entity with joint and several liability, escrow deposits equal to the full amount owed for a quarter within fifteen days following the due date for the quarter under section 69-2703, the state may execute upon the bond, first to recover delinquent escrow, which amount shall be deposited into a qualified escrow account under section 69-2703, and then to recover civil penalties and costs authorized under such section. Escrow obligations above the amount collected on the bond remain due from that nonparticipating manufacturer and, as provided in subdivision (2)(d) of section 69-2703 and section 69-2708.01, from the importers and stamping agents that sold its cigarettes during that calendar quarter.

Source: Laws 2011, LB590, § 9.

69-2708 Stamping agent; duties; Tax Commissioner; Attorney General; powers.

(1) Not later than fifteen days following the end of each month, each stamping agent shall submit, in the manner directed by the Tax Commissioner, such information as the Tax Commissioner requires to facilitate compliance with sections 69-2704 to 69-2711, including, but not limited to (a) a list by brand family of the total number of cigarettes or, in the case of roll-your-own, the equivalent stick count for which the stamping agent affixed stamps during the previous month or otherwise paid the total due for such cigarettes, the total number of cigarettes contained in the packages to which it affixed each respective type of stamp, and by name and number of cigarettes, the tobacco product manufacturers and brand families of the packages to which it affixed each respective type of stamp or similar information for roll-your-own on which tax was paid and (b) the total number of cigarettes acquired by the stamping agent during that month for sale in or into the state or for sale from this state into another state, sold in or into the state by the stamping agent during that month and held in inventory in the state or for sale into the state by the stamping agent as of the last business day of that month, in each case identifying by name and number of cigarettes, (i) the manufacturers of those cigarettes and (ii) the brand families of those cigarettes. In the case of a stamping agent that is a retailer, reports under subdivision (1)(a) of this section do not have to include cigarettes contained in packages that bore a stamp required under section 77-2603 or 77-2603.01 at the time the stamping agent received them and that the stamping agent then sold at retail. The stamping agent shall also submit a certification stating that the information provided to the Tax Commissioner is complete and accurate. The stamping agent shall maintain, and make available to the Tax Commissioner, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Tax Commissioner for a period of five years. The Tax Commissioner may share the information reported under this section with the taxing or law enforcement authorities of this state or other states. The Tax Commissioner may also share with a nonparticipating manufacturer information reported under this section pertaining to such nonparticipating manufacturer's cigarettes.

(2) The Attorney General may require at any time from the nonparticipating manufacturer proof, from the financial institution in which such manufacturer has established a qualified escrow fund for the purpose of compliance with section 69-2703, of the amount of money in such fund, exclusive of interest, the amounts and dates of each deposit to such fund, and the amounts and dates of each withdrawal from such fund.

(3) In addition to the information required to be submitted pursuant to subsection (1) of this section, the Tax Commissioner or Attorney General may require a stamping agent, distributor, or tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the Tax Commissioner or Attorney General to determine whether a tobacco product manufacturer is in compliance with sections 69-2704 to 69-2711.

(4) The Tax Commissioner or the Attorney General may require production of information sufficient to enable the Tax Commissioner or Attorney General to determine the adequacy of the amount of a quarterly escrow deposit under subdivision (2) of section 69-2703. The Tax Commissioner may adopt and promulgate rules and regulations implementing how tobacco product manufacturers subject to subdivision (2) of section 69-2703 make quarterly payments.

Source: Laws 2003, LB 572, § 5; Laws 2007, LB580, § 3; Laws 2011, LB590, § 10.

69-2708.01 Stamping agent; responsible for escrow deposits; when; liability; calculation.

(1) A stamping agent shall be responsible for escrow deposits required under subdivision (2) of section 69-2703 in the event it receives notice from the Attorney General that there is a shortfall amount with respect to nonparticipating manufacturer cigarettes stamped by it.

(2) The liability of a stamping agent for escrow deposits shall be calculated as follows: If there is a shortfall amount for a nonparticipating manufacturer for a calendar quarter, each stamping agent that sold cigarettes of that nonparticipating manufacturer during the calendar quarter shall deposit into such escrow account as shall be designated by the state an amount equal to the applicable shortfall amount multiplied by a fraction, the numerator of which is the number of cigarettes of that nonparticipating manufacturer sold in or into the state by the stamping agent during that calendar quarter and the denominator of which is the total number of cigarettes of that nonparticipating manufacturer sold by all stamping agents in or into the state during that calendar quarter, except that any nonparticipating manufacturer cigarettes sold in or into the state by a stamping agent during the calendar quarter in which the stamping agent collected and deposited the required escrow deposit amount on or before the due date for deposits for that quarter under subdivision (2) of section 69-2703 shall be excluded from both the numerator and the denominator of the fraction. To the extent a stamping agent makes payments with respect to a shortfall amount under this subsection, such stamping agent shall have a claim against the nonparticipating manufacturer for such amount.

(3) A stamping agent shall not be liable for escrow deposits under subsections (1) and (2) of this section if, at the time of purchase of such nonparticipating manufacturer's cigarettes:

(a) The nonparticipating manufacturer is on the directory pursuant to section 69-2706; and

(b) The state denotes on the directory that the nonparticipating manufacturer has posted the appropriate bond required under section 69-2707.01.

Source: Laws 2011, LB590, § 11.

69-2709 Revocation or suspension of stamping agent license; civil penalty; termination of license; grounds; violations; penalties; effect of termination; eligibility for reinstatement; directory license; termination; procedure; contraband; actions to enjoin; criminal penalty; remedies cumulative.

(1) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent has violated subsection (4) of section 69-2706 or any rule or regulation adopted and promulgated pursuant thereto, the Tax Commissioner may revoke or suspend the license of any stamping agent in the manner provided by section 77-2615.01. For each violation of subsection (4) of section 69-2706 or the rules and regulations, the Tax Commissioner may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars upon a determination of violation of subsection (4) of section 69-2706 or any rules or regulations adopted and promulgated pursuant thereto. Such penalty shall be imposed in the manner provided by section 77-2615.01.

(2) The license of a stamping agent shall be subject to termination if the stamping agent:

(a) Fails to provide a report required under section 69-2708, 69-2710.01, or 77-2604.01;

(b) Files an incomplete or inaccurate report required under section 69-2708, 69-2710.01, or 77-2604.01 or files an inaccurate certification required under section 69-2708, subsection (2) of section 77-2603, or section 69-2710.01;

(c) Fails to pay taxes as provided in section 77-2602 or deposit escrow as provided in section 69-2708.01;

(d) Sells cigarettes in or into the state in a package that bears a stamp required under section 77-2603 or 77-2603.01 that is not the correct stamp and provides for a lower level of tax than the correct stamp;

(e) Sells unstamped cigarettes in, into, or from the state or possesses unstamped cigarettes in the state except as provided in section 77-2607;

(f) Purchases, sells in or into the state, or affixes a stamp to a package containing cigarettes of a manufacturer or brand family that is not at the time listed in the directory, or possesses such cigarettes more than ten days after receiving notice that the manufacturer or brand family is not in the directory, unless such stamping agent possesses a directory license under section 77-2603 or unless expressly permitted under sections 69-2701 to 69-2711 or sections 77-2601 to 77-2622; or

(g) Purchases or sells cigarettes in violation of subsection (5) of this section or section 69-2710.02.

(3) In the case of a violation under subdivision (2)(a), (b), (c), or (d) of this section that was not knowing or intentional, the stamping agent shall be entitled to cure the violation within ten days after receipt of notice of such

violation. The license of a stamping agent that fully cures the violation during that period shall not be terminated on account of that violation.

(4) In the case of a knowing or intentional violation under subdivision (2)(a), (b), (c), or (d) of this section, or of any violation described in subdivision (2)(e) or (f) of this section, the stamping agent shall for a first violation be subject to a civil penalty of up to one thousand dollars and be guilty of a Class IV misdemeanor and for a second or subsequent violation be subject to a civil penalty of up to five thousand dollars per violation and be guilty of a Class II misdemeanor. In the case of violations described in subdivision (2)(d), (e), or (f) of this section, each sale constitutes a separate offense.

(5) The Tax Commissioner shall promptly remove any stamping agent whose license is terminated from the list required by subsection (4) of section 77-2603 and shall publish a notice of the termination on the Tax Commissioner's web site and send notice of the termination to all stamping agents and to all persons listed in the directory. Beginning ten days following the publication and sending of such notice, no person may sell cigarettes to, or purchase cigarettes from, the stamping agent whose license has been terminated.

(6) If a stamping agent whose license has been terminated is a tobacco product manufacturer, the tobacco product manufacturer and its brand families shall be removed from the directory.

(7) A stamping agent whose license is terminated shall be eligible for reinstatement:

(a) Ninety days following the termination, in the case of a first failure under subdivision (2)(a), (b), (c), or (d) of this section that was not knowing or intentional;

(b) One hundred eighty days following the termination, in the case of a second failure under subdivision (2)(a), (b), (c), or (d) of this section that was not knowing or intentional;

(c) One year following the termination, in the case of a third or subsequent failure under subdivision (2)(a), (b), (c), or (d) of this section that was not knowing or intentional;

(d) One year following the termination, in the case of a first knowing or intentional failure under subdivision (2)(a), (b), (c), or (d) of this section or a first violation described in subdivision (2)(e), (f), or (g) of this section; and

(e) Three years following the termination, in the case of a second or subsequent knowing or intentional failure under subdivision (2)(a), (b), (c), or (d) of this section or a second or subsequent violation described in subdivision (2)(e), (f), or (g) of this section.

(8) Any cigarettes that have been sold, offered for sale, or possessed for sale in this state in violation of subsection (4) of section 69-2706 shall be deemed contraband under section 77-2620 and such cigarettes shall be subject to seizure and forfeiture as provided in section 77-2620, except that all such cigarettes so seized and forfeited shall be destroyed and not resold. The stamping agent shall notify its customers for a brand family with regard to any notice of removal of a tobacco product manufacturer or a brand family from the directory and give its customers a seven-day period for the return of cigarettes that become contraband.

(9) The Attorney General, on behalf of the Tax Commissioner, may seek an injunction to restrain a threatened or actual violation of subsection (4) of

section 69-2706 or section 69-2708 by a stamping agent and to compel the stamping agent to comply with subsection (4) of section 69-2706 or section 69-2708. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees. This subsection shall not apply to a stamping agent purchasing cigarettes which are not in violation of subsection (4) of section 69-2706 or section 69-2708.

(10) It is unlawful for a person to (a) sell or distribute cigarettes for sale in this state or (b) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of subsection (4) of section 69-2706. A violation of this subsection is a Class III misdemeanor.

(11) If a court determines that a person has violated any portion of sections 69-2704 to 69-2711, the court shall order the payment of any profits, gains, gross receipts, or other benefits from the violation to be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. Unless otherwise expressly provided, the remedies or penalties provided by sections 69-2704 to 69-2711 are cumulative to each other and to the remedies or penalties available under all applicable laws of this state.

(12) It is unlawful for any manufacturer, importer, or stamping agent to knowingly submit any false information required pursuant to sections 69-2703 to 69-2711. A violation of this subsection is a Class IV felony. Knowing submission of false information shall also be grounds for removal of a tobacco product manufacturer from the directory.

(13) A tobacco product manufacturer that knowingly or intentionally sells cigarettes in violation of subsection (5) of this section or section 69-2710.01 and its brand families shall be removed from the directory.

(14) A nonparticipating manufacturer whose total nationwide reported sales on which federal excise tax is paid exceed the sum of its nationwide reports under 15 U.S.C. 375 et seq. and any intrastate sales reports under 15 U.S.C. 375 et seq. by more than five percent of its total sales or one million cigarettes, whichever is less, shall be subject to removal from the directory unless it cures or satisfactorily explains the discrepancy within ten days after receipt of notice of the discrepancy from the Attorney General pursuant to section 69-2708.01.

(15) Any person that is not a stamping agent or tobacco product manufacturer that fails to file a complete and accurate report required under section 69-2708, 69-2710.01, 77-2604, or 77-2604.01 shall be entitled to cure the failure within ten days after receipt of notice of the discrepancy from the Attorney General pursuant to section 69-2708.01. If the person fails to fully cure the failure within such period, it shall be subject to a civil penalty of up to one thousand dollars per violation and shall be ineligible to hold any license of the state regarding cigarette sales until the date specified by subsection (7) of this section for violations of subdivision (2)(a) of this section.

(16) A directory license shall be subject to termination if the licensee acts inconsistently with its certification under subsection (2) of section 77-2603 or violates sections 69-2701 to 69-2711.

(17) Any person that knowingly or intentionally purchases or sells cigarettes in violation of subsection (5) of this section or section 69-2710.01 or that knowingly or intentionally sells cigarettes in or into the state in a package that

bears a stamp required under section 77-2603 or 77-2603.01 that is not the correct stamp and provides for a lower level of tax than the correct stamp shall for a first violation be subject to a civil penalty of up to one thousand dollars and be guilty of a Class IV misdemeanor and for a second or subsequent violation be subject to a civil penalty of up to five thousand dollars per violation and be guilty of a Class II misdemeanor. Each sale constitutes a separate violation.

Source: Laws 2003, LB 572, § 6; Laws 2007, LB580, § 4; Laws 2011, LB590, § 12.

69-2710 Removal from directory; procedure.

(1) Before any tobacco product manufacturer may be removed from the directory, the Tax Commissioner shall provide the tobacco product manufacturer thirty days' notice of the intended action and shall post the notice in the directory. The tobacco product manufacturer shall have thirty days to come into compliance with sections 69-2703 to 69-2711 or, in the alternative, secure a temporary injunction against removal in the district court of Lancaster County. For purposes of the temporary injunction sought pursuant to this subsection, loss of the ability to sell tobacco products as a result of removal from the directory shall constitute irreparable harm. If after thirty days the tobacco product manufacturer remains in noncompliance and has not obtained a temporary injunction pursuant to this subsection, the tobacco product manufacturer shall be removed from the directory.

(2) If the Tax Commissioner determines that a tobacco product manufacturer shall not be included in the directory, such manufacturer may request a contested case before the Tax Commissioner under the Administrative Procedure Act. The Tax Commissioner shall notify the tobacco product manufacturer in writing of the determination not to include it in the directory. A request for hearing shall be made within thirty calendar days after the date of the determination that the manufacturer shall not be included in the directory and shall contain the evidence supporting the manufacturer's compliance with sections 69-2703 to 69-2711. The hearing shall be held within sixty days after the request. At the hearing, the Tax Commissioner shall determine whether the tobacco product manufacturer is in compliance with sections 69-2703 to 69-2711 and whether the manufacturer should be listed in the directory. A final decision shall be rendered within thirty days after the hearing. Any decision of the Tax Commissioner may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2003, LB 572, § 7; Laws 2011, LB590, § 13.

Cross References

Administrative Procedure Act, see section 84-920.

69-2710.01 Report; contents.

(1) Any person that during a month acquired, purchased, sold, possessed, transferred, transported, or caused to be transported in or into this state cigarettes of a tobacco product manufacturer or brand family that was not in the directory at the time shall, within fifteen days following the end of that month, file a report on a form and in the manner prescribed by the Tax Commissioner and certify to the state that the report is complete and accurate. The report shall contain, in addition to any further information that the Tax

Commissioner may reasonably require to assist the Tax Commissioner in enforcing sections 69-2701 to 69-2711 and 77-2601 to 77-2622 and the Tobacco Products Tax Act, the following information:

(a) The total number of those cigarettes, in each case identifying by name and number of cigarettes (i) the manufacturers of those cigarettes, (ii) the brand families of those cigarettes, (iii) in the case of a sale or transfer, the name and address of the recipient of those cigarettes, (iv) in the case of an acquisition or purchase, the name and address of the seller or sender of those cigarettes, and (v) the other states in whose directory the manufacturer and brand family of those cigarettes were listed at the time and whose stamps the person is authorized to affix; and

(b) In the case of acquisition, purchase, or possession, the details of the person's subsequent sale or transfer of those cigarettes, identifying by name and number of cigarettes (i) the brand families of those cigarettes, (ii) the date of the sale or transfer, (iii) the name and address of the recipient, (iv) the number of stamps of each other state that the person affixed to the packages containing those cigarettes during that month, (v) the total number of cigarettes contained in the packages to which it affixed each respective other state's stamp, (vi) the manufacturers and brand families of the packages to which it affixed each respective other state's stamp, and (vii) a certification that it reported each sale or transfer to the taxing authority of the other state by fifteen days following the end of the month in which the sale or transfer was made and attaching a copy of all such reports. If the subsequent sale or transfer is from this state into another state in packages not bearing a stamp of the other state, the report shall also contain the information described in subdivision (2)(c) of section 77-2604.01.

(2) Reports under this section shall be in addition to reports under sections 69-2708, 77-2604, and 77-2604.01.

Source: Laws 2011, LB590, § 14.

Cross References

Tobacco Products Tax Act, see section 77-4001.

69-2710.02 License of stamping agent; termination; grounds; cure; notice; reinstatement; removal from directory; grounds; cure; notice; procedure.

(1) The license of a stamping agent may be subject to termination if its similar license is terminated in any other state based on acts or omissions that would be grounds for license termination under subsection (2) of section 69-2709, unless the stamping agent demonstrates that its termination in the other state was effected without due process. If a stamping agent's license is terminated in another state for a violation similar to a violation listed in subdivision (2)(a), (b), (c), or (d) of section 69-2709 that was not knowing or intentional, the stamping agent shall not be subject to license termination if the stamping agent fully cures such violation and provides notice of such cure to the Department of Revenue within ten days after receipt of notice of such violation. A stamping agent whose license is terminated under this subsection shall be eligible for reinstatement upon the earlier of the date specified by subsection (7) of section 69-2709 for the act or omission in question or reinstatement of its license by the other state.

(2) A tobacco product manufacturer and its brand families may be removed from the directory if it is removed from the directory of another state based on

acts or omissions that would, if done in this state, be grounds for removal from the directory under section 69-2706, 69-2707, 69-2707.01, or 69-2710 or subsection (6) of section 69-2709, unless the tobacco product manufacturer demonstrates that its removal from the other state's directory was effected without due process, that it fully cured such violation and provided notice of such cure to the Department of Revenue within thirty days after receipt of notice of the violation, or that it secured a temporary injunction against removal from the directory in the district court of Lancaster County. For purposes of a temporary injunction sought pursuant to this subsection, loss of the ability to sell tobacco products as a result of removal from the directory shall constitute irreparable harm. If, after thirty days, the tobacco product manufacturer remains in noncompliance and has not obtained a temporary injunction pursuant to this subsection, the tobacco product manufacturer shall be removed from the directory. A manufacturer that is removed from the directory under this subsection shall be eligible for reinstatement upon the earlier of the date on which it cures the violation or is reinstated to the directory in the other state.

(3) The applicable procedures under section 77-2615.01 shall apply to terminations and removals under this section.

Source: Laws 2011, LB590, § 15.

69-2710.03 Rules and regulations.

The Tax Commissioner may adopt and promulgate rules and regulations necessary to effect the purposes of sections 69-2703 to 69-2711.

Source: Laws 2011, LB590, § 16.

69-2711 Conflict of laws; how treated.

If a court of competent jurisdiction finds that the provisions of sections 69-2704 to 69-2711 and of sections 69-2702 and 69-2703 conflict and cannot be harmonized, then the provisions of sections 69-2702 and 69-2703 shall control. If sections 69-2704 to 69-2711 or any part of any such sections causes sections 69-2702 and 69-2703 to no longer constitute a Qualifying or Model Statute, as those terms are defined in the Master Settlement Agreement, then that portion of sections 69-2704 to 69-2711 shall not be valid.

Source: Laws 2003, LB 572, § 13; Laws 2011, LB590, § 17.

CHAPTER 70

POWER DISTRICTS AND CORPORATIONS

Article.

3. Right-of-Way for Pole Lines. 70-311.
6. Public Power and Irrigation Districts. 70-612 to 70-655.
10. Nebraska Power Review Board. 70-1001 to 70-1033.
16. Denial or Discontinuance of Utility Service. 70-1603, 70-1605.
19. Rural Community-Based Energy Development Act. 70-1903 to 70-1909.

ARTICLE 3

RIGHT-OF-WAY FOR POLE LINES

Section

70-311. Electric transmission or electric distribution lines; notice of road, road ditch improvement, or other projects; when given.

70-311 Electric transmission or electric distribution lines; notice of road, road ditch improvement, or other projects; when given.

(1) Whenever any county or township road construction, widening, repair, or grading project or any road ditch improvement project requires, or can reasonably be expected to require, the performance of any work within ten feet of any electric transmission or electric distribution line, poles, or anchors, notice to the owner of such line, poles, or anchors shall be given by the respective county or township officers in charge of such projects. Such notice shall be given at least ninety days prior to the start of any work when, because of road construction, widening, repair, or grading or a road ditch improvement project, or for any other reason, it is necessary to relocate such line, poles, or anchors or if such work will compromise the structural integrity of the line, poles, or anchors.

(2) If a natural resources district will be altering a road structure or grading or moving earth for a flood control, recreation, or other project that requires, or can reasonably be expected to require, the performance of any work within ten feet of any electric transmission or electric distribution line, poles, or anchors, notice to the owner of such line, poles, or anchors shall be given by the respective natural resources district in charge of such projects. Such notice shall be given at least ninety days prior to the start of any work when, because of such road structure alteration or grading or moving earth, or for any other reason, it is necessary to relocate such line, poles, or anchors or if such work will compromise the structural integrity of the line, poles, or anchors.

Source: Laws 2002, LB 1105, § 474; Laws 2010, LB643, § 1.

ARTICLE 6

PUBLIC POWER AND IRRIGATION DISTRICTS

Section

- 70-612. Board of directors; election; subdivisions; procedure.
 70-615. Board of directors; vacancy; how filled.
 70-619. Board of directors; qualifications.

Section

70-623. Fiscal year; annual audit; filing.

70-651.04. Districts; gross revenue tax; distribution.

70-655. Reasonable rates required; negotiated rates authorized; conditions.

70-612 Board of directors; election; subdivisions; procedure.

(1)(a) Subject to the provisions of Chapter 70, article 6, and subject to the approval of the Nebraska Power Review Board, the board of directors of a district, other than a district with a service area containing a city of the metropolitan class, may amend the petition for its creation to provide for the division of the territory of such district into two or more subdivisions for the nomination and election of some or all of the directors. Each subdivision shall be composed of one or more voting precincts, or divided voting precincts, and the total population of each such subdivision shall be approximately the same. Except in districts which contain a city of the metropolitan class, two or more subdivisions may be combined for election purposes, and members of the board of directors to be elected from such combined subdivisions may be nominated and elected at large when not less than seventy-five percent of the population of the combined subdivisions is within the corporate limits of any city.

(b) In the event a district formed includes all or part of two or more counties and is (i) engaged in furnishing electric light and power and more than fifty percent of its customers are rural customers or (ii) engaged in furnishing electric light and power and in the business of owning and operating irrigation works, then and in that event such subdivisions may be formed by following precinct or county boundary lines without regard to population if in the judgment of the Nebraska Power Review Board the interests of the rural users of electricity or of users of irrigation water service in such district will not be prejudiced thereby.

(2)(a) The board of directors of a district with a service area containing a city of the metropolitan class may amend its charter to provide for the division of the territory of the district into election subdivisions composed of substantially equal population and compact and contiguous territory and number the subdivisions consecutively and submit the maps to the Nebraska Power Review Board.

(b) If the board of directors provides for eight election subdivisions prior to January 1, 2014, the board of directors shall assign each position on the board of directors to represent a numbered election subdivision for the remainder of the term of office for which the member is elected, regardless of whether the member resides in the subdivision, and shall make such assignments so that the terms of members representing election subdivisions numbered one, two, and three expire in January 2015, the terms of members representing election subdivisions numbered four and five expire in January 2017, and the terms of members representing election subdivisions six, seven, and eight expire in January 2019. If possible, each member shall be assigned to represent an election subdivision that corresponds to the end of the term he or she is serving.

(c) A successor who resides in the numbered election subdivision shall be nominated and elected at the statewide primary and general elections held in the calendar year prior to the expiration of the term of the member who represents such numbered election subdivision.

(3) After each federal decennial census, the board of directors of a district with a service area containing a city of the metropolitan class shall create new boundaries for the election subdivisions. In establishing the boundaries of the election subdivisions, the board of directors shall follow county lines wherever practicable, shall provide for the subdivisions to be composed of substantially equal population and compact and contiguous territory, and shall, as nearly as possible, follow the precinct lines created by the election commissioner or county clerk after each federal decennial census.

(4) Any public power district or public power and irrigation district owning and operating irrigation works may, with approval of the Nebraska Power Review Board, add representation on its board of directors from any county which is outside its chartered territory but in which is located some or all of such irrigation works.

Source: Laws 1937, c. 152, § 4, p. 581; Laws 1941, c. 137, § 1, p. 542; C.S.Supp.,1941, § 70-704; Laws 1943, c. 145, § 1(3), p. 511; Laws 1943, c. 146, § 1, p. 516; R.S.1943, § 70-612; Laws 1967, c. 418, § 3, p. 1287; Laws 1981, LB 181, § 14; Laws 1982, LB 198, § 3; Laws 1986, LB 949, § 12; Laws 1992, LB 424, § 18; Laws 1992, LB 573, § 9; Laws 2013, LB646, § 2.

70-615 Board of directors; vacancy; how filled.

(1) In addition to the events listed in section 32-560, a vacancy on the board of directors shall exist in the event of the (a) removal from the chartered area of any director, (b) removal from the subdivision from which such director was elected except as otherwise provided in subsection (2) or (3) of section 70-612, (c) elimination or detachment from the chartered area of the territory in which a director or directors reside, or (d) expiration of the term of office of a director and failure to elect a director to fill such office at the preceding general election. After notice and hearing, a vacancy shall also exist in the event of the absence of any director from more than two consecutive regular meetings of the board, unless such absences are excused by a majority of the remaining board members.

(2) In the event of a vacancy from any of such causes, or otherwise, such vacancy or vacancies shall, except in districts having within their chartered area twenty-five or more cities and villages, be filled by the board of directors. In districts having within their chartered area twenty-five or more cities and villages, vacancies shall be filled by the Governor.

(3) If a vacancy occurs during the term of any director prior to the deadline for filing and the unexpired term extends beyond the first Thursday after the first Tuesday in January following the next general election, an appointment shall be until the first Thursday after the first Tuesday in January following the next general election, and candidates may file nomination papers as provided by law for the placing of their names upon the ballot for election to the unexpired term. If a vacancy occurs during the term of any director after the deadline for filing for election, an appointment shall be until the first Thursday after the first Tuesday in January following the next general election for which candidates may file nomination papers as provided by law.

(4) At any time a vacancy is to be filled by election, the secretary of the district shall give notice to the public by publishing the notice of vacancy,

length of term, and the deadline for filing, once in a newspaper or newspapers of general circulation within the district.

(5) Any appointment shall be filed with the Secretary of State by certified mail.

Source: Laws 1933, c. 86, § 4, p. 344; Laws 1937, c. 152, § 4, p. 581; Laws 1941, c. 137, § 1, p. 542; C.S.Supp.,1941, § 70-704; Laws 1943, c. 145, § 1(7), p. 514; Laws 1943, c. 146, § 1, p. 516; R.S.1943, § 70-615; Laws 1945, c. 157, § 3, p. 518; Laws 1953, c. 106, § 31, p. 338; Laws 1957, c. 124, § 23, p. 436; Laws 1967, c. 418, § 5, p. 1268; Laws 1973, LB 364, § 3; Laws 1975, LB 453, § 59; Laws 1985, LB 569, § 2; Laws 1994, LB 76, § 584; Laws 2013, LB646, § 3.

70-619 Board of directors; qualifications.

(1) The corporate powers of the district shall be vested in and exercised by the board of directors of the district. No person shall be qualified to hold office as a member of the board of directors unless (a) he or she is a registered voter (i) of such chartered territory, (ii) of the subdivision from which a director is to be elected if such chartered territory is subdivided for election purposes as provided in subsection (1), (2), or (3) of section 70-612, or (iii) of one of the combined subdivisions from which directors are to be elected at large as provided in section 70-612 or (b) he or she is a retail customer duly certified in accordance with subsection (3) of section 70-604.03.

(2) No person who is a full-time or part-time employee of the district shall be eligible to serve as a member of the board of directors unless such person resigns or assumes an unpaid leave of absence for the term as a member. The district shall grant such leave of absence when requested by any employee for the purpose of the employee serving as a member of the board of directors. No person shall be qualified to be a member of more than one such district board, except that a director of a rural public power district may serve as a director of another public power district formed or organized for the purpose of generating electric energy or transmitting electric energy exclusively for resale to some other public power districts, rural electric cooperatives, and membership associations or municipalities. No member of a governing body of any one of the municipalities within the areas of the district shall be qualified to serve on the original board of directors under sections 70-603 to 70-609.

Source: Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 518; R.S.1943, § 70-619; Laws 1944, Spec. Sess., c. 5, § 1(1), p. 106; Laws 1957, c. 127, § 2, p. 440; Laws 1963, c. 396, § 1, p. 1258; Laws 1967, c. 418, § 6, p. 1288; Laws 1973, LB 364, § 4; Laws 1982, LB 198, § 4; Laws 1983, LB 15, § 1; Laws 1985, LB 2, § 5; Laws 1986, LB 949, § 13; Laws 1991, LB 3, § 1; Laws 1994, LB 76, § 585; Laws 2013, LB646, § 4.

Cross References

Eligibility, additional requirements, see section 70-610.

70-623 Fiscal year; annual audit; filing.

The fiscal year of the district shall coincide with the calendar year, except that a district with only one wholesale customer that is a city or a village may use the same fiscal year as the city or village. The board of directors, at the close of each year's business, shall cause an audit of the books, records, and financial affairs of the district to be made by a certified public accountant or firm of such accountants, who shall be selected by the district. The audit shall be conducted in the manner prescribed in section 84-304.01. When the audit has been completed, written copies of the audit shall be placed and kept on file at the principal place of business of the district and shall be filed with the Auditor of Public Accounts and the Nebraska Power Review Board within one hundred eighty days after the last day of the district's fiscal year.

Source: Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 519; R.S.1943, § 70-623; Laws 1944, Spec. Sess., c. 5, § 1(6), p. 107; Laws 1967, c. 420, § 1, p. 1294; Laws 1981, LB 302, § 6; Laws 1993, LB 310, § 8; Laws 2004, LB 969, § 13; Laws 2014, LB798, § 1.
Effective date July 18, 2014.

70-651.04 Districts; gross revenue tax; distribution.

All payments which are based on retail revenue from each incorporated city or village shall be divided and distributed by the county treasurer to that city or village, to the school districts located in that city or village, to any learning community located in that city or village, and to the county in which may be located any such incorporated city or village in the proportion that their respective property tax levies in the preceding year bore to the total of such levies, except that the only learning community levies to be included are the common levies for which the proceeds are distributed to member school districts pursuant to sections 79-1073 and 79-1073.01.

Source: Laws 1959, c. 317, § 4, p. 1164; Laws 1979, LB 187, § 183; Laws 1993, LB 346, § 6; Laws 1995, LB 732, § 1; Laws 2010, LB1070, § 2.

70-655 Reasonable rates required; negotiated rates authorized; conditions.

(1) Except as otherwise provided in this section, the board of directors of any district organized under or subject to Chapter 70, article 6, shall have the power and be required to fix, establish, and collect adequate rates, tolls, rents, and other charges for electrical energy, water service, water storage, and for any and all other commodities, including ethanol and hydrogen, services, or facilities sold, furnished, or supplied by the district, which rates, tolls, rents, and charges shall be fair, reasonable, nondiscriminatory, and so adjusted as in a fair and equitable manner to confer upon and distribute among the users and consumers of commodities and services furnished or sold by the district the benefits of a successful and profitable operation and conduct of the business of the district.

(2) The board of directors may negotiate, fix, establish, and collect rates, tolls, rents, and other charges for users and consumers of electrical energy and associated services or facilities different from those of other users and consumers. Any negotiated rates, tolls, rents, and other charges for a commercial or industrial customer shall be effective for no more than five years and in no case shall such rates, tolls, rents, and charges include a production component that

is less than the incremental production cost of supplying such services if (a) such customer has entered an agreement with the state or any political subdivision to provide an economic development project pursuant to state or local law and (b) such economic development project has projected new or additional electrical load requirements greater than five hundred kilowatts and a minimum annual load demand factor of sixty percent during the applicable billing period. This subsection shall also apply to any nonprofit corporation organized for the purpose of furnishing electric service pursuant to the Electric Cooperative Corporation Act or the Nebraska Nonprofit Corporation Act, any agency created pursuant to the Municipal Cooperative Financing Act, and any municipality engaged in furnishing electrical service to customers at retail or wholesale.

(3) In order to facilitate the merger and consolidation of districts, the board of directors of a merged or consolidated district may negotiate, fix, establish, and collect rates, tolls, rents, and other charges for consumers in the service area of one or more of the predecessor districts which are different than rates, tolls, rents, and other charges for consumers in the remaining service area of the merged or consolidated district. Any different rates, tolls, rents, and other charges pursuant to this subsection shall be effective for no more than five years after the date of merger or consolidation and shall be based on cost of service or other rate studies showing that adoption of dissimilar rates for consumers in otherwise similar rate classes is needed to effectuate the merger or consolidation. This subsection shall also apply in the event of a merger or consolidation of any nonprofit corporation organized for the purpose of furnishing electric service pursuant to the Electric Cooperative Corporation Act or the Nebraska Nonprofit Corporation Act.

Source: Laws 1933, c. 86, § 13, p. 353; Laws 1937, c. 152, § 8, p. 589; Laws 1939, c. 89, § 1, p. 388; C.S.Supp., 1941, § 70-713; R.S. 1943, § 70-655; Laws 1981, LB 181, § 26; Laws 1986, LB 1230, § 47; Laws 1995, LB 828, § 2; Laws 2001, LB 243, § 1; Laws 2005, LB 139, § 16; Laws 2012, LB1043, § 1.

Cross References

Electric Cooperative Corporation Act, see section 70-701.

Municipal Cooperative Financing Act, see section 18-2401.

Nebraska Nonprofit Corporation Act, see section 21-1901.

ARTICLE 10

NEBRASKA POWER REVIEW BOARD

Section

- 70-1001. Declaration of policy.
- 70-1001.01. Terms, defined.
- 70-1003. Nebraska Power Review Board; establishment; composition; appointment; term; vacancy; qualifications; compensation; expenses; jurisdiction; officers; executive director; staff; reports.
- 70-1013. Electric generation facilities and transmission lines; application; hearing; waiver; appearances; objections; amendments.
- 70-1014. Electric generation facilities and transmission lines; approval or denial of application; findings required; regional line or facilities; additional consideration.
- 70-1014.01. Special generation application; approval; findings required; eminent domain.

Section

- 70-1014.02. Certified renewable export facilities; approval of application; board; powers and duties; conditional approval; final approval; failure to commence construction; effect; application fee; eminent domain; revocation of certification; procedure; recertification.
- 70-1015. Suppliers; electric generation facilities and transmission lines; unauthorized construction, acquisition, or service; injunction; violation; actions authorized.
- 70-1020. Board; expenses; assessments levied against suppliers; apportionment; collection; interest; Nebraska Power Review Fund; created; investment.
- 70-1028. Electric transmission line approved for construction in regional transmission organization transmission plan; notice to Nebraska Power Review Board; failure to provide notice; effect.
- 70-1029. Legislative intent.
- 70-1030. Policy of state.
- 70-1031. Purposes of study.
- 70-1032. Working group; members.
- 70-1033. Nebraska Power Review Board; duties.

70-1001 Declaration of policy.

In order to provide the citizens of the state with adequate electric service at as low overall cost as possible, consistent with sound business practices, it is the policy of this state to avoid and eliminate conflict and competition between public power districts, public power and irrigation districts, individual municipalities, registered groups of municipalities, electric membership associations, and cooperatives in furnishing electric energy to retail and wholesale customers, to avoid and eliminate the duplication of facilities and resources which result therefrom, and to facilitate the settlement of rate disputes between suppliers of electricity.

It is also the policy of the state to prepare for an evolving retail electricity market if certain conditions are met which indicate that retail competition is in the best interests of the citizens of the state. The determination on the timing and form of competitive markets is a matter properly left to the states as each state must evaluate the costs and benefits of a competitive retail market based on its own unique conditions. Consequently, there is a need for the state to monitor whether the conditions necessary for its citizens to benefit from retail competition exist.

It is also the policy of the state to encourage and allow opportunities for private developers to develop, own, and operate renewable energy facilities intended primarily for export from the state under a statutory framework which protects the ratepayers of consumer-owned utility systems operating in the state from subsidizing the costs of such export facilities through their rates.

Source: Laws 1963, c. 397, § 1, p. 1259; Laws 1971, LB 349, § 4; Laws 1981, LB 181, § 42; Laws 2000, LB 901, § 6; Laws 2010, LB1048, § 2.

70-1001.01 Terms, defined.

For purposes of sections 70-1001 to 70-1027, unless the context otherwise requires:

- (1) Board means the Nebraska Power Review Board;
- (2) Certified renewable export facility means a facility approved under section 70-1014.02 that (a) will generate electricity using solar, wind, biomass, or landfill gas, (b) will be constructed and owned by an entity other than a

municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, or any other governmental entity, and (c) has a power purchase or similar agreement or agreements with an initial term of ten years or more for the sale of at least ninety percent of the output of the facility with a customer or customers located outside the State of Nebraska and maintains such an agreement or agreements for the life of the facility. Output sold pursuant to subdivision (2)(a)(iv) of section 70-1014.02 shall not be included when calculating such ninety percent. Certified renewable export facility includes all generating equipment, easements, and interconnection equipment within the facility and connecting the facility to the transmission grid;

(3) Except as expressly provided in section 70-1014.02, electric suppliers or suppliers of electricity means any legal entity supplying, producing, or distributing electricity within the state for sale at wholesale or retail;

(4) Regional transmission organization means an entity independent from those entities generating or marketing electricity at wholesale or retail, which has operational control over the electric transmission lines in a designated geographic area in order to reduce constraints in the flow of electricity and ensure that all power suppliers have open access to transmission lines for the transmission of electricity;

(5) Representative organization means an organization designated by the board and organized for the purpose of providing joint planning and encouraging maximum cooperation and coordination among electric suppliers. Such organization shall represent electric suppliers owning a combined electric generation plant capacity of at least ninety percent of the total electric generation plant capacity constructed and in operation within the state;

(6) State means the State of Nebraska;

(7) Stranded asset means a generation or transmission facility owned by an electric supplier as defined in subsection (1) of section 70-1014.02 which cannot earn a favorable economic return due to regulatory or legislative actions or changes in the market and, at the time an application is filed with the board under such section, either exists or has been approved by the board or the governing body of an electric supplier as defined in such subsection; and

(8) Unbundled retail rates means the separation of utility bills into the individual price components for which an electric supplier charges its retail customers, including, but not limited to, the separate charges for the generation, transmission, and distribution of electricity.

Source: Laws 1981, LB 302, § 1; R.S.1943, (1996), § 70-1023; Laws 2000, LB 901, § 7; Laws 2003, LB 65, § 1; Laws 2010, LB1048, § 3; Laws 2011, LB208, § 1.

70-1003 Nebraska Power Review Board; establishment; composition; appointment; term; vacancy; qualifications; compensation; expenses; jurisdiction; officers; executive director; staff; reports.

(1) There is hereby established an independent board to be known as the Nebraska Power Review Board to consist of five members, one of whom shall be an engineer, one an attorney, one an accountant, and two laypersons. No person who is or who has within four years preceding his or her appointment been either a director, officer, or employee of any electric utility or an elective

state officer shall be eligible for membership on the board. Members of the board shall be appointed by the Governor subject to the approval of the Legislature. Upon expiration of the terms of the members first appointed, the successors shall be appointed for terms of four years. No member of the board shall serve more than two consecutive terms. Any vacancy on the board arising other than from the expiration of a term shall be filled by appointment for the unexpired portion of the term, and any person appointed to fill a vacancy on the board shall be eligible for reappointment for two more consecutive terms. No more than three members of the board shall be registered members of that political party represented by the Governor. Each member of the board shall receive sixty dollars per day for each day actually and necessarily engaged in the performance of his or her duties, but not to exceed six thousand dollars in any one year, and shall be reimbursed for his or her actual and necessary expenses while so engaged as provided in sections 81-1174 to 81-1177. The board shall have jurisdiction as provided in Chapter 70, article 10.

(2) The board shall meet promptly after its members have been appointed. They shall elect from their members a chairperson and a vice-chairperson. Decisions of the board shall require the approval of a majority of the members of the board.

(3) The board shall employ an executive director and may employ such other staff necessary to carry out the duties pursuant to Chapter 70, article 10. The executive director shall serve at the pleasure of the board and shall be solely responsible to the board. The executive director shall be responsible for the administrative operations of the board and shall perform such other duties as may be delegated or assigned to him or her by the board. The board may obtain the services of experts and consultants necessary to carry out the board's duties pursuant to Chapter 70, article 10.

(4) The board shall publish and submit a biennial report with annual data to the Governor, with copies to be filed with the Clerk of the Legislature and with the State Energy Office. The report submitted to the Clerk of the Legislature shall be submitted electronically. The State Energy Office shall consider the information in the Nebraska Power Review Board's report when the State Energy Office prepares its own reports pursuant to sections 81-1606 and 81-1607. The report of the board shall include:

- (a) The assessments for the fiscal year imposed pursuant to section 70-1020;
- (b) The gross income totals for each category of the industry and the industry total;
- (c) The number of suppliers against whom the assessment is levied, by category and in total;
- (d) The projected dollar costs of generation, transmission, and microwave applications, approved and denied;
- (e) The actual dollar costs of approved applications upon completion, and a summary of an informational hearing concerning any significant divergence between the projected and actual costs;
- (f) A description of Nebraska's current electric system and information on additions to and retirements from the system during the fiscal year, including microwave facilities;
- (g) A statistical summary of board activities and an expenditure summary;

(h) A roster of power suppliers in Nebraska and the assessment each paid; and

(i) Appropriately detailed historical and projected electric supply and demand statistics, including information on the total generating capacity owned by Nebraska suppliers and the total peak load demand of the previous year, along with an indication of how the industry will respond to the projected situation.

(5) The board may, in its discretion, hold public hearings concerning the conditions that may indicate that retail competition in the electric industry would benefit Nebraska's citizens and what steps, if any, should be taken to prepare for retail competition in Nebraska's electricity market. In determining whether to hold such hearings, the board shall consider the sufficiency of public interest.

(6) The board may, at any time deemed beneficial by the board, submit a report to the Governor with copies to be filed with the Clerk of the Legislature and the Natural Resources Committee of the Legislature. The report filed with the Clerk of the Legislature and the committee shall be filed electronically. The report may include:

(a) Whether or not a viable regional transmission organization and adequate transmission exist in Nebraska or in a region which includes Nebraska;

(b) Whether or not a viable wholesale electricity market exists in a region which includes Nebraska;

(c) To what extent retail rates have been unbundled in Nebraska;

(d) A comparison of Nebraska's wholesale electricity prices to the prices in the region; and

(e) Any other information the board believes to be beneficial to the Governor, the Legislature, and Nebraska's citizens when considering whether retail electric competition would be beneficial, such as, but not limited to, an update on deregulation activities in other states and an update on federal deregulation legislation.

(7) The board may establish working groups of interested parties to assist the board in carrying out the powers set forth in subsections (5) and (6) of this section.

Source: Laws 1963, c. 397, § 3, p. 1260; Laws 1971, LB 554, § 1; Laws 1978, LB 800, § 1; Laws 1980, LB 863, § 1; Laws 1981, LB 181, § 46; Laws 1981, LB 204, § 107; Laws 2000, LB 901, § 8; Laws 2010, LB797, § 1; Laws 2012, LB782, § 101.

70-1013 Electric generation facilities and transmission lines; application; hearing; waiver; appearances; objections; amendments.

Upon application being filed under section 70-1012, the board shall fix a time and place for hearing and shall give ten days' notice by mail to such power suppliers as it deems to be affected by the application. The hearing shall be held within sixty days unless for good cause shown the applicant requests in writing that such hearing not be scheduled until a later time, but in any event such hearing shall be held not more than one hundred twenty days after the filing of the application and the board shall give its decision within sixty days after the conclusion of the hearing. Any parties interested may appear, file objections, and offer evidence. The board may grant the application without notice or hearing, upon the filing of such waivers as it may require, if in its judgment the

finding required by section 70-1014 or 70-1014.01 or subdivision (2)(a) of section 70-1014.02 can be made without a hearing. Such hearing shall be conducted as provided in section 70-1006. The board may allow amendments to the application, in the interests of justice.

Source: Laws 1963, c. 397, § 13, p. 1265; Laws 1967, c. 425, § 1, p. 1301; Laws 2010, LB1048, § 4; Laws 2011, LB208, § 2; Laws 2013, LB340, § 1.

70-1014 Electric generation facilities and transmission lines; approval or denial of application; findings required; regional line or facilities; additional consideration.

After hearing, the board shall have authority to approve or deny the application. Except as provided in section 70-1014.01 for special generation applications and except as provided in section 70-1014.02, before approval of an application, the board shall find that the application will serve the public convenience and necessity, and that the applicant can most economically and feasibly supply the electric service resulting from the proposed construction or acquisition, without unnecessary duplication of facilities or operations.

If the application involves a transmission line or related facilities planned and approved by a regional transmission organization and the regional transmission organization has issued a notice to construct or similar notice or order to a utility to construct the line or related facilities, the board shall also consider information from the regional transmission organization's planning process and may consider the benefits to the region, which shall include Nebraska, provided by the proposed line or related facilities as part of the board's process in determining whether to approve or deny the application.

Source: Laws 1963, c. 397, § 14, p. 1265; Laws 1981, LB 181, § 51; Laws 2003, LB 65, § 2; Laws 2010, LB1048, § 5; Laws 2012, LB742, § 1.

70-1014.01 Special generation application; approval; findings required; eminent domain.

(1) Except as provided in subsection (2) of this section, an application by a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, or any other governmental entity, for a facility that will generate not more than ten thousand kilowatts of electric energy at rated capacity and will generate electricity using solar, wind, biomass, landfill gas, methane gas, or hydropower generation technology or an emerging generation technology, including, but not limited to, fuel cells and micro-turbines, shall be deemed a special generation application. Such application shall be approved by the board if the board finds that (a) the application qualifies as a special generation application, (b) the application will provide public benefits sufficient to warrant approval of the application, although it may not constitute the most economically feasible generation option, and (c) the application under consideration represents a separate and distinct project from any previous special generation application the applicant may have filed.

(2)(a) An application by a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, or any other governmental entity for

a facility that will generate more than ten thousand kilowatts of electric energy at rated capacity and will generate electricity using renewable energy sources such as solar, wind, biomass, landfill gas, methane gas, or new hydropower generation technology or an emerging technology, including, but not limited to, fuel cells and micro-turbines, may be filed with the board if (i) the total production from all such renewable projects, excluding sales from such projects to other electric-generating entities, does not exceed ten percent of total energy sales as shown in the producer's Annual Electric Power Industry Report to the United States Department of Energy and (ii) the applicant's governing body conducts at least one advertised public hearing which affords the ratepayers of the applicant a chance to review and comment on the subject of the application.

(b) The application filed under subdivision (2)(a) of this section shall be approved by the board if the board finds that (i) the applicant is using renewable energy sources described in this subsection, (ii) total production from all renewable projects of the applicant does not exceed ten percent of the producer's total energy sales as described in subdivision (2)(a) of this section, and (iii) the applicant's governing body has conducted at least one advertised public hearing which affords its ratepayers a chance to review and comment on the subject of the application.

(3)(a) A community-based energy development project organized pursuant to the Rural Community-Based Energy Development Act or any privately developed project which intends to develop renewable energy sources for sale to one or more Nebraska electric utilities described in this section may also make an application to the board pursuant to this subsection if (i) the purchasing electric utilities conduct a public hearing described in subdivision (2)(a) of this section, (ii) the power and energy from the renewable energy sources is sold exclusively to such electric utilities for a term of at least twenty years, and (iii) the total production from all such renewable projects, excluding sales from such projects to other electric-generation entities, does not exceed ten percent of total energy sales of such purchasing electric utilities as shown in such utilities' Annual Electric Power Industry Report to the United States Department of Energy or the successor to such report.

(b) The application filed under subdivision (3)(a) of this section shall be approved by the board if the board finds that the purchasing electric utilities have met the conditions described in subdivision (3)(a) of this section.

(4) No facility or part of a facility which is approved pursuant to this section is subject to eminent domain by any electric supplier, or by any other entity if the purpose of the eminent domain proceeding is to acquire the facility for electric generation or transmission.

Source: Laws 2003, LB 65, § 3; Laws 2009, LB561, § 2; Laws 2010, LB1048, § 7; Laws 2012, LB742, § 2.

Cross References

Rural Community-Based Energy Development Act, see section 70-1901.

70-1014.02 Certified renewable export facilities; approval of application; board; powers and duties; conditional approval; final approval; failure to commence construction; effect; application fee; eminent domain; revocation of certification; procedure; recertification.

(1) For purposes of this section:

(a) Electric supplier means a public power district, a public power and irrigation district, an individual municipality, a registered group of municipalities, an electric membership association, or a cooperative; and

(b) Electric supplier does not have the same meaning as in section 70-1001.01.

(2)(a) The board shall conditionally approve an application for a certified renewable export facility if it finds that only the criteria described in subdivisions (a)(i) through (iv) of this subsection are met: (i) The facility will provide reasonably identifiable and quantifiable public benefits, including economic development, to the residents of Nebraska or the local area where the facility will be located; (ii) the facility meets the requirements of subdivisions (2)(a) and (b) of section 70-1001.01; (iii) the facility has a memorandum of understanding or other written evidence of mutual intent to negotiate a power purchase agreement or agreements with a purchaser or purchasers outside the State of Nebraska for at least ninety percent of the output of the facility for ten years or more; and (iv) the applicant offers electric suppliers serving loads greater than fifty megawatts at the time the initial application is filed an option to purchase in the aggregate an amount of power up to ten percent of the output of any facility with greater than eighty megawatts of nameplate capacity contingent upon the applicant and electric suppliers negotiating in good faith a power purchase agreement and any other necessary agreements. Such electric suppliers shall be entitled to a minimum of their pro rata share based on the load ratio share of Nebraska electric load served among those electric suppliers eligible under this subdivision (iv). If an electric supplier declines to contract for some or all of its pro rata share, the remaining eligible electric suppliers may share the balance on a pro rata basis. The ten percent may be above the total generation amount proposed in the application for a certified renewable export facility and shall require no separate approval by the board. Any transmission studies, additions, or upgrades due to participation by electric suppliers serving loads greater than fifty megawatts shall be the responsibility of the participating electric supplier. Upon receiving the initial application under this section, the board shall notify electric suppliers identified in this subdivision (iv) of a pending application with a nameplate capacity greater than eighty megawatts. Such suppliers shall have forty-five days following the date of the board's notice to notify the applicant of an interest in exercising the option to purchase power, except that such suppliers may withdraw their option to purchase power once the costs of the transmission additions and upgrades are determined. Electric suppliers withdrawing their option to purchase power are responsible for their pro rata share of any costs resulting from their participation in and withdrawal from the generation interconnection and transmission delivery studies.

(b) Following the board's conditional approval of an application under subdivision (a) of this subsection, the applicant shall notify the board within eighteen months that it is prepared to proceed to consideration of the criteria in subdivision (c) of this subsection. The board may extend such eighteen-month deadline not more than twelve additional months for good cause shown. If the applicant fails to notify the board within such time that it is so prepared, the conditional approval granted under this subdivision is void.

(c) Upon finding that the criteria described in subdivisions (c)(i) through (viii) of this subsection have also been met by the applicant and after the board has

fulfilled the requirements of subsection (3) of section 37-807, the board shall grant final approval of an application for a certified renewable export facility:

(i) The facility will not have a materially detrimental effect on the retail electric rates paid by any Nebraska ratepayers, except that, notwithstanding subdivisions (c)(v) and (vi) of this subsection, the determination of a materially detrimental effect on rates shall not include regional transmission improvements dictated by a regional transmission operator or transmission improvements required due to participation by an eligible entity pursuant to subdivision (2)(a)(iv) of this section;

(ii) The applicant has obtained the necessary generation interconnection and transmission service approvals from and has executed agreements for such generation interconnection and transmission service with the appropriate regional transmission organization, transmission owner, or transmission provider;

(iii) There has been no demonstration that the proposed facility will result in a substantial risk of creating stranded assets;

(iv) The applicant has certified that it has applied for and is actively pursuing the required approvals from any other federal, state, or local entities with jurisdiction or permitting authority over the certified renewable export facility;

(v) The applicant and the electric supplier owning the transmission facilities to which the certified renewable export facility will be interconnected, along with any electric supplier which owns transmission facilities of one hundred fifteen thousand volts or more and is required to receive notice pursuant to section 70-1013, have entered into a joint transmission development agreement on reasonable terms and conditions consistent with and subject to the notice to construct or other directives of any regional transmission organization with jurisdiction over the addition or upgrade to transmission facilities or, for any electric supplier that is not a member of a regional transmission organization with which the facility will interconnect, covers the addition or upgrade to transmission facilities required as a result of the certified renewable export facility. Such joint transmission development agreement shall include provisions addressing construction, ownership, operation, and maintenance of such additions or upgrades to transmission facilities. The electric supplier or suppliers shall have the right to purchase and own transmission facilities as set forth in the joint transmission development agreement;

(vi) The applicant agrees to reimburse any costs that are not covered by a regional transmission organization tariff or that are allocated through the tariff to the electric suppliers as a result of the certified renewable export facility or not covered by the tariff of a transmission owner or transmission provider that is not a member of a regional transmission organization, costs incurred by any electric supplier as a result of adding the certified renewable export facility, including, but not limited to, renewable integration costs, and costs which allow the interconnected electric supplier to operate and maintain the transmission facilities under reasonable terms and conditions agreed to by the parties within the joint transmission development agreement;

(vii) The applicant shall submit a decommissioning plan. The applicant or owner of the facility shall establish decommissioning security by posting an instrument, a copy of which is given to the board, no later than the tenth year following final approval of the facility to ensure sufficient funding is available for removal of the facility and reclamation at the end of the useful life of such

facility pursuant to the decommissioning plan. The owner of the certified renewable export facility shall be solely responsible for decommissioning. If the applicant or any subsequent owner of the facility intends to transfer ownership of the facility, the proposed new owner shall provide the board with adequate evidence demonstrating that substitute decommissioning security has been posted or given prior to transfer of ownership. The requirements of this subdivision (vii) shall be waived if a local governmental entity with authority to create requirements for decommissioning has enacted decommissioning requirements for the applicable jurisdiction; and

(viii) The facility meets the requirements of subdivisions (2)(a) through (c) of section 70-1001.01.

(3) If the applicant does not commence construction of the certified renewable export facility within eighteen months after receiving final approval from the board under subsection (2) of this section, the approval is void. Upon written request filed by the applicant, the board may, for good cause shown, extend the time period during which an approval will remain valid. Good cause includes, but is not limited to, national or regional economic conditions, lack of transmission infrastructure, or an applicant's inability to obtain authorization from other required governmental regulatory authorities despite the applicant's exercise of a good-faith effort to obtain such approvals.

(4) The applicant shall remit an application fee of five thousand dollars with the application. The fee shall be remitted to the State Treasurer for credit to the Nebraska Power Review Fund. The board shall use the application fee to defray the board's reasonable expenses associated with reviewing and acting upon the application, including the costs of the hearing. If the board incurs expenses of more than five thousand dollars associated with the application, the board shall provide written notification to the applicant of the additional sum needed or already expended, after which the applicant shall promptly submit an additional sum sufficient to cover the board's anticipated or incurred expenses or shall file an objection with the board. If, after completion of the application process and any subsequent legal action, including appeal of the board's decision, the board's expenses associated with processing and acting upon the application do not equal the amount submitted by the applicant, the board shall return the unused funds to the applicant if the amount is fifty dollars or more. The applicant shall reimburse the board for any reasonable expenses the board incurs as a result of an appeal of the board's decision or shall file an objection with the board. The board shall rule on any objection brought pursuant to this subsection within thirty days. The applicant may request a hearing on its objection, in which case the board shall hold such hearing within thirty days after the request and shall rule within forty-five days after the hearing.

(5) No facility or part of a facility which is a certified renewable export facility is subject to eminent domain by an electric supplier or by any other entity if the purpose of the eminent domain proceeding is to acquire the facility for electric generation or transmission.

(6) Except as provided in subsection (5) of this section, only an electric supplier may exercise its eminent domain authority to acquire the land rights necessary for the construction of transmission lines and related facilities to provide transmission services for a certified renewable export facility. The exercise of eminent domain to provide needed transmission lines and related facilities for a certified renewable export facility is a public use. Nothing in this

section shall be construed to grant the power of eminent domain to a private entity.

(7) If any transmission facilities serving a certified renewable export facility are proposed to cross the service area of any electric supplier which owns transmission facilities of one hundred fifteen thousand volts or more and is required to receive notice pursuant to section 70-1013, then such electric supplier may elect to be a party to a joint transmission development agreement for such transmission facilities.

(8) If a certified renewable export facility no longer meets the requirements of subdivisions (2)(a) through (c) of section 70-1001.01, the owner of the facility shall notify the board. An electric supplier or a governmental entity with regulatory jurisdiction over the certified renewable export facility may apply to the board or the board may file its own motion to have the certification of a certified renewable export facility revoked upon a showing by the applicant for decertification that the facility no longer meets the requirements of such subdivisions. Upon the filing of such application and making of a prima facie showing by the applicant for decertification that the facility no longer meets the requirements of such subdivisions, the board shall set the matter for hearing. The hearing shall be held within forty-five days unless an extension is necessary for good cause shown. The applicant for decertification shall have the burden of proof. Within forty-five days after the conclusion of the hearing, the board shall enter an order to either reaffirm the facility's status as a certified renewable export facility or to revoke the certification. During the pendency of the application for decertification and before the board's final order on decertification, the facility may continue to operate if the electricity generated at the facility is sold to customers outside the State of Nebraska, or to an electric supplier pursuant to a power purchase agreement or similar agreement. The board shall retain jurisdiction over the decertification action for at least thirty days after entry of such an order. Within thirty days after a final order revoking certification, the owner of the facility may apply for recertification, with the time period for recertification being no longer than one year unless the board extends the time period for good cause shown. Such application for recertification shall extend the board's jurisdiction over the decertification action until the board completes its review of the application for recertification and enters an order granting or denying the application. If the applicant for recertification demonstrates to the board that it is working diligently and in good faith to restore its compliance with subdivisions (2)(a) through (c) of section 70-1001.01, the board shall not terminate the application for recertification. During the pendency of the application for recertification and before the board's final order on recertification, the facility may continue to operate if the electricity generated at the facility is sold to customers outside the state, or to an electric supplier pursuant to a power purchase agreement or similar agreement. If the board retains jurisdiction over the decertification action, the prohibition on eminent domain set forth in subsection (5) of this section shall remain in full force and effect. If the board enters an order decertifying a certified renewable export facility and such order becomes final due to a failure to timely seek recertification or judicial review, the prohibition on eminent domain set forth in subsection (5) of this section shall no longer apply. Nothing in this section shall prohibit a decertified facility from being recertified in the same manner as a new facility.

Source: Laws 2010, LB1048, § 6; Laws 2011, LB208, § 3.

70-1015 Suppliers; electric generation facilities and transmission lines; unauthorized construction, acquisition, or service; injunction; violation; actions authorized.

(1) If any supplier commences the construction or finalizes or attempts to finalize the acquisition of any generation facilities, any transmission lines, or any related facilities, or any customers are served in violation of the provisions of Chapter 70, article 10, such construction, acquisition, or service of such customers shall be enjoined in an action brought in the name of the State of Nebraska until such supplier has complied with the provisions of Chapter 70, article 10.

(2) If any person owning or operating a certified renewable export facility violates any provision of Chapter 70, article 10, or violates or disobeys any requirement imposed by the board pursuant to the board's jurisdiction established in section 70-1014.02 or the board enters an order decertifying the facility and the order becomes final, further operation of the facility may be enjoined or otherwise limited or have conditions put upon it in an action brought in the name of the State of Nebraska until such person rectifies the violation or disobedience of the order or the facility becomes recertified.

Source: Laws 1963, c. 397, § 15, p. 1265; Laws 1967, c. 426, § 1, p. 1302; Laws 1981, LB 181, § 52; Laws 2011, LB208, § 4.

70-1020 Board; expenses; assessments levied against suppliers; apportionment; collection; interest; Nebraska Power Review Fund; created; investment.

In order to defray the expenses of the Nebraska Power Review Board, there shall be imposed upon each public power district, public power and irrigation district, electric membership association, electric cooperative company, and municipality having an electric distribution system or generation and distribution system, and also upon all registered groups of municipalities, an assessment each fiscal year in such sum as shall be determined by the board and approved by the Governor. The total of such assessments shall not exceed the expenses of the board which may reasonably be anticipated for the fiscal year for which assessment is made and shall be apportioned among the various agencies in proportion to their gross income in the preceding calendar year. The board shall determine and certify such assessment to each supplier after approval of the board's budget by the Legislature and Governor. The supplier shall remit the amount of its assessment to the board within forty-five days after the mailing of the assessment. Any assessment not paid when due shall draw interest at a rate equal to the rate of interest allowed per annum under section 45-104.02, as such rate may from time to time be adjusted. The proceeds of such assessment shall be remitted to the State Treasurer for credit to the Nebraska Power Review Fund, which fund is hereby created and which, when appropriated by the Legislature, shall be used to administer the powers granted to the Nebraska Power Review Board, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Power Review 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. 397, § 20, p. 1266; Laws 1965, c. 407, § 1, p. 1307; Laws 1969, c. 584, § 65, p. 2385; Laws 1981, LB 181, § 55; Laws

1984, LB 730, § 1; Laws 1992, Fourth Spec. Sess., LB 1, § 10; Laws 1994, LB 1066, § 64; Laws 2009, First Spec. Sess., LB3, § 43.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

70-1028 Electric transmission line approved for construction in regional transmission organization transmission plan; notice to Nebraska Power Review Board; failure to provide notice; effect.

(1) If an electric transmission line has been approved for construction in a regional transmission organization transmission plan, the incumbent electric transmission owner of the existing electric transmission facilities to which the electric transmission line will connect shall give notice to the Nebraska Power Review Board, in writing, within ninety days after such approval, if it intends to construct, own, and maintain the electric transmission line. If no notice is provided, the incumbent electric transmission owner shall surrender its first right to construct, own, and maintain the electric transmission line and any other incumbent electric transmission owner may file an application for the electric transmission line under section 70-1012. Within twenty-four months after such notice, the incumbent electric transmission owner shall file an application with the board pursuant to section 70-1012.

(2) For purposes of this section: (a) Electric transmission line means any line and related facilities connecting to existing electric transmission facilities for transmitting electric energy at a voltage of one hundred kilovolts or greater, other than a line solely for connecting an electric generation facility to facilities owned by an electric supplier; (b) incumbent electric transmission owner means an entity that: (i) Is an electric supplier; (ii) is a member of a regional transmission organization; and (iii) owns and operates electric transmission lines at a voltage of one hundred kilovolts or greater; and (c) regional transmission organization has the meaning provided in section 70-1001.01.

Source: Laws 2013, LB388, § 1.

70-1029 Legislative intent.

It is the intent of the Legislature to appropriate an additional \$200,000 for FY2014-15 to the Nebraska Power Review Board from the General Fund to provide funds to conduct or cause to be conducted a study of state, regional, and national transmission infrastructure and policy and future needs for transmission infrastructure and policy to serve Nebraska electric consumers and utilities and generation facilities in Nebraska seeking to export electricity outside of the state.

Source: Laws 2014, LB1115, § 1.
Effective date April 17, 2014.

70-1030 Policy of state.

It is the policy of the state to encourage and allow opportunities for development and operation of renewable energy facilities intended primarily for export from the state in a manner that protects the ratepayers of consumer-owned utility systems operating in the state from subsidizing the costs of such export

facilities through their rates and that results in economic development and employment opportunities for residents and communities of the state.

Source: Laws 2014, LB1115, § 2.
Effective date April 17, 2014.

70-1031 Purposes of study.

The purposes of the study provided for under sections 70-1029 to 70-1033 shall include, but not be limited to, identification of electric transmission and generation constraints and opportunities, federal and state legal and regulatory requirements and practices, national and regional transmission operation, national and regional transmission plans and policies, national and regional markets for electricity export and opportunities for and barriers to exporting electricity to such markets, and economic development benefits of expanded state, regional, and national transmission connections.

Source: Laws 2014, LB1115, § 3.
Effective date April 17, 2014.

70-1032 Working group; members.

The scope of the study provided for under sections 70-1029 to 70-1033 shall receive input from a working group that may include, but not be limited to, members of the Legislature, the State Energy Office, the Department of Economic Development, public power districts and other Nebraska electric providers, renewable energy development companies, municipalities, the Southwest Power Pool, the Western Area Power Administration, other transmission system owners, transmission operators, transmission developers, environmental interests, and other interested parties.

Source: Laws 2014, LB1115, § 4.
Effective date April 17, 2014.

70-1033 Nebraska Power Review Board; duties.

(1) The Nebraska Power Review Board shall issue a request for proposals to conduct the study provided for under sections 70-1029 to 70-1033 after consultation with the working group as provided for in section 70-1032.

(2) Any contracts or agreements entered into under this section shall not be subject to the Nebraska Consultants' Competitive Negotiation Act or sections 73-301 to 73-306 or 73-501 to 73-510.

(3) The Nebraska Power Review Board shall present the results of the study to the Executive Board of the Legislative Council with a copy to the Clerk of the Legislature and the Governor on or before December 15, 2014. The report shall be submitted electronically.

Source: Laws 2014, LB1115, § 5.
Effective date April 17, 2014.

Cross References

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

ARTICLE 16

DENIAL OR DISCONTINUANCE OF UTILITY SERVICE

Section

70-1603. Municipal utility; owned and operated by a village; discontinuance of service; notice; procedure.

70-1605. Discontinuance of service; notice; procedure.

70-1603 Municipal utility; owned and operated by a village; discontinuance of service; notice; procedure.

No municipal utility owned and operated by a village furnishing water, natural gas, or electricity at retail in this state shall discontinue service to any domestic subscriber for nonpayment of any past-due account unless such utility first gives written notice by mail to any subscriber whose service is proposed to be terminated at least seven days prior to termination.

Source: Laws 1979, LB 143, § 16; Laws 1982, LB 522, § 2; R.S.1943, (1987), § 19-2716; Laws 1988, LB 792, § 3; Laws 1996, LB 1044, § 369; Laws 2010, LB849, § 17.

70-1605 Discontinuance of service; notice; procedure.

No public or private utility company, other than a municipal utility owned and operated by a village, furnishing water, natural gas, or electricity at retail in this state shall discontinue service to any domestic subscriber for nonpayment of any past-due account unless the utility company first gives notice by first-class mail or in person to any subscriber whose service is proposed to be terminated. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Service shall not be discontinued for at least seven days after notice is sent or given. Holidays and weekends shall be excluded from the seven days.

Source: Laws 1972, LB 1201, § 1; R.R.S.1943, (1977), § 18-416; Laws 1979, LB 143, § 1; Laws 1982, LB 522, § 1; R.S.1943, (1987), § 19-2702; Laws 1988, LB 792, § 5; Laws 1996, LB 1044, § 370; Laws 2010, LB849, § 18.

ARTICLE 19

RURAL COMMUNITY-BASED ENERGY DEVELOPMENT ACT

Section

70-1903. Terms, defined.

70-1904. C-BED project developer; electric utility; negotiation; power purchase agreement; development of project; restriction on transfer; eligibility for net energy billing; approval or certification; notice of change in ownership.

70-1909. Electric supplier; limit on eminent domain.

70-1903 Terms, defined.

For purposes of the Rural Community-Based Energy Development Act:

(1) C-BED project or community-based energy development project means a new energy generation project using wind, solar, biomass, or landfill gas as the fuel source that:

(a) Has at least twenty-five percent of the gross power purchase agreement payments flowing to the qualified owner or owners or as payments to the local community; and

(b) Has a resolution of support adopted:

(i) By the county board of each county in which the C-BED project is to be located; or

(ii) By the tribal council for a C-BED project located within the boundaries of an Indian reservation;

(2) Electric utility means an electric supplier that:

(a) Owns more than one hundred miles of one-hundred-fifteen-kilovolt or larger transmission lines in the State of Nebraska;

(b) Owns more than two hundred megawatts of electric generating facilities; and

(c) Has the obligation to directly serve more than two hundred megawatts of wholesale or retail electric load in the State of Nebraska;

(3) Gross power purchase agreement payments means the total amount of payments during the first twenty years of the agreement;

(4) Payments to the local community include, but are not limited to:

(a) Lease and easement payments to property owners made as part of a C-BED project;

(b) Contract payments for concrete, steel, gravel, towers, turbines, blades, wire, or engineering, procurement, construction, geotechnical, environmental, meteorological, or legal services or payments for other components, equipment, materials, or services that are necessary to permit or construct the C-BED project and that are provided by a company that has been organized or incorporated in Nebraska under Nebraska law and has employed at least five Nebraska residents for at least eighteen months prior to the date of the project application for certification as a C-BED project; and

(c) Payments that are for physical parts, materials, or components that are manufactured, assembled, or fabricated in Nebraska and that are not described in subdivision (a) or (b) of this subdivision.

Such payments need not be made directly from power purchase agreement revenue and may be made from other funds in advance of receiving power purchase agreement revenue; and

(5) Qualified owner means:

(a) A Nebraska resident;

(b) A limited liability company that is organized under the Nebraska Uniform Limited Liability Company Act and that is made up of members who are Nebraska residents;

(c) A Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act;

(d) An electric supplier as defined in section 70-1001.01, except that ownership in a single C-BED project is limited to no more than:

(i) Fifteen percent either directly or indirectly by a single electric supplier; and

(ii) A combined total of twenty-five percent ownership either directly or indirectly by multiple electric suppliers;

(e) A tribal council;

(f) A domestic corporation organized in Nebraska under the Business Corporation Act and domiciled in Nebraska; or

(g) A cooperative corporation organized under sections 21-1301 to 21-1306 and domiciled in Nebraska.

Source: Laws 2007, LB629, § 3; Laws 2008, LB916, § 1; Laws 2009, LB561, § 3; Laws 2010, LB888, § 102; Laws 2013, LB283, § 4; Laws 2014, LB402, § 1.

Effective date July 18, 2014.

Cross References

Business Corporation Act, see section 21-2001.

Nebraska Nonprofit Corporation Act, see section 21-1901.

Nebraska Uniform Limited Liability Company Act, see section 21-101.

70-1904 C-BED project developer; electric utility; negotiation; power purchase agreement; development of project; restriction on transfer; eligibility for net energy billing; approval or certification; notice of change in ownership.

(1) A C-BED project developer and an electric utility are authorized to negotiate in good faith mutually agreeable power purchase agreement terms.

(2) A qualified owner or any combination of qualified owners may develop a C-BED project with an equity partner that is not a qualified owner.

(3) Except for an inherited interest, the transfer of the interest of a qualified owner in a C-BED project to any person other than another qualified owner or other qualified owners is prohibited during the initial ten years of the power purchase agreement.

(4) A C-BED project that is operating under a power purchase agreement is not eligible for any applicable net energy billing.

(5) A C-BED project shall be subject to approval by the Nebraska Power Review Board in accordance with Chapter 70, article 10, or shall receive certification as a qualifying facility in accordance with the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 et seq., with written notice of such certification provided to the Nebraska Power Review Board.

(6) A C-BED project developer shall notify any electric utility that has a power purchase agreement with the C-BED project if there is a change in project ownership which makes the project no longer eligible as a C-BED project.

Source: Laws 2007, LB629, § 4; Laws 2008, LB916, § 2; Laws 2009, LB561, § 4; Laws 2014, LB402, § 2.

Effective date July 18, 2014.

70-1909 Electric supplier; limit on eminent domain.

An electric supplier as defined in section 70-1001.01 may agree to limit its exercise of the power of eminent domain to acquire a C-BED project and any related facilities if such electric supplier enters into a contract to purchase output from such C-BED project for a term of ten years or more.

Source: Laws 2007, LB629, § 9; Laws 2014, LB402, § 3.

Effective date July 18, 2014.

CHAPTER 71

PUBLIC HEALTH AND WELFARE

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ARTICLE 2

PRACTICE OF BARBERING

Section

- 71-202.01. Terms, defined.
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- 71-219.03. Board of Barber Examiners; set fees; manner; annual report.
- 71-222.02. Board of Barber Examiners Fund; created; use; investment.

71-202.01 Terms, defined.

For purposes of the Barber Act, unless the context otherwise requires:

(1) Barber shall mean any person who engages in the practice of any act of barbering;

(2) Barber pole shall mean a cylinder or pole with alternating stripes of red, white, and blue or any combination of them which run diagonally along the length of the cylinder or pole;

(3) Barber shop shall mean an establishment or place of business properly licensed as required by the act where one or more persons properly licensed are engaged in the practice of barbering but shall not include barber schools or colleges;

(4) Barber school or college shall mean an establishment properly licensed and operated for the teaching and training of barber students;

(5) Board shall mean the Board of Barber Examiners;

(6) Manager shall mean a licensed barber having control of the barber shop and of the persons working or employed therein;

(7) License shall mean a certificate of registration issued by the board;

(8) Barber instructor shall mean a teacher of the barber trade as provided in the act;

(9) Assistant barber instructor shall mean a teacher of the barbering trade registered as an assistant barber instructor as required by the act;

(10) Registered or licensed barber shall mean a person who has completed the requirements to receive a certificate as a barber and to whom a certificate has been issued;

(11) Secretary of the board shall mean the director appointed by the board who shall keep a record of the proceedings of the board; and

(12) Student shall mean a person attending an approved, licensed barber school or college, duly registered with the board as a student engaged in learning and acquiring any and all of the practices of barbering, and who, while learning, performs and assists any of the practices of barbering in a barber school or college.

Source: Laws 1971, LB 1020, § 5; Laws 1978, LB 722, § 3; Laws 1983, LB 87, § 15; Laws 1993, LB 226, § 3; Laws 2011, LB46, § 1.

71-208.01 School or college of barbering; payment of wages, commissions, or gratuities forbidden; operation of barber shop in connection with school or college, prohibited.

No school or college of barbering shall be approved by the Board of Barber Examiners which shall pay any wages, commissions, or gratuities of any kind to barber students for barber work while in training or while enrolled as students in such school or college. No barber shop shall be operated by or in connection with any barber school or college.

Source: Laws 1945, c. 166, § 1(2), p. 533; Laws 1957, c. 294, § 4, p. 1054; Laws 1971, LB 1020, § 10; Laws 2011, LB46, § 2.

71-219.03 Board of Barber Examiners; set fees; manner; annual report.

The Board of Barber Examiners shall set the fees at a level sufficient to provide for all actual and necessary expenses and salaries of the board and in such a manner that unnecessary surpluses are avoided. The board shall annually file a report with the Attorney General and the Legislative Fiscal Analyst stating the amount of the fees set by the board. Such report shall be submitted on or before July 1 of each year. The report submitted to the Legislative Fiscal Analyst shall be submitted electronically.

Source: Laws 1975, LB 66, § 7; Laws 2012, LB782, § 102.

71-222.02 Board of Barber Examiners Fund; created; use; investment.

All funds collected in the administration of the Barber Act shall be remitted to the State Treasurer for credit to the Board of Barber Examiners Fund which is hereby created and which shall be expended only for the administration of the act, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Board of Barber Examiners 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. 409, § 27, p. 1327; Laws 1969, c. 584, § 68, p. 2387; Laws 1995, LB 7, § 73; Laws 2009, First Spec. Sess., LB3, § 44.

Cross References

Fees, see sections 33-151 and 33-152.

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 4

HEALTH CARE FACILITIES

Section

- 71-401. Act, how cited.
- 71-403. Definitions, where found.
- 71-408.01. Children's day health service, defined.
- 71-413. Health care facility, defined.
- 71-415. Health care service, defined.
- 71-421. Intermediate care facility for persons with developmental disabilities, defined.
- 71-428. Respite care service, defined.
- 71-434. License fees.
- 71-448. License; disciplinary action; grounds.
- 71-465. Repealed. Laws 2012, LB 782, § 253.
- 71-466. Religious residential facility; exemption from licensure and regulation.
- 71-467. General acute hospital; employees; influenza vaccinations; tetanus-diphtheria-pertussis vaccine; duties; record.
- 71-468. Onsite vaccinations for influenza and pneumococcal disease.
- 71-469. Onsite vaccinations for diphtheria, tetanus, and pertussis.

71-401 Act, how cited.

Sections 71-401 to 71-469 shall be known and may be cited as the Health Care Facility Licensure Act.

Source: Laws 2000, LB 819, § 1; Laws 2001, LB 398, § 65; Laws 2004, LB 1005, § 41; Laws 2007, LB203, § 1; Laws 2009, LB288, § 31;

Laws 2010, LB849, § 19; Laws 2010, LB999, § 1; Laws 2011, LB34, § 1; Laws 2011, LB542, § 1; Laws 2012, LB1077, § 1; Laws 2013, LB459, § 1.

71-403 Definitions, where found.

For purposes of the Health Care Facility Licensure Act, unless the context otherwise requires, the definitions found in sections 71-404 to 71-431 shall apply.

Source: Laws 2000, LB 819, § 3; Laws 2007, LB203, § 2; Laws 2010, LB849, § 20.

71-408.01 Children's day health service, defined.

(1) Children's day health service means a person or any legal entity which provides specialized care and treatment, including an array of social, medical, rehabilitation, or other support services for a period of less than twenty-four consecutive hours in a community-based group program to twenty or more persons under twenty-one years of age who require such services due to medical dependence, birth trauma, congenital anomalies, developmental disorders, or functional impairment.

(2) Children's day health service does not include services provided under the Developmental Disabilities Services Act.

Source: Laws 2010, LB849, § 21.

Cross References

Developmental Disabilities Services Act, see section 83-1201.

71-413 Health care facility, defined.

Health care facility means an ambulatory surgical center, an assisted-living facility, a center or group home for the developmentally disabled, a critical access hospital, a general acute hospital, a health clinic, a hospital, an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health center, a nursing facility, a pharmacy, a psychiatric or mental hospital, a public health clinic, a rehabilitation hospital, a skilled nursing facility, or a substance abuse treatment center.

Source: Laws 2000, LB 819, § 13; Laws 2013, LB23, § 26.

71-415 Health care service, defined.

Health care service means an adult day service, a home health agency, a hospice or hospice service, a respite care service, or beginning January 1, 2011, a children's day health service. Health care service does not include an in-home personal services agency as defined in section 71-6501.

Source: Laws 2000, LB 819, § 15; Laws 2007, LB236, § 43; Laws 2010, LB849, § 22.

71-421 Intermediate care facility for persons with developmental disabilities, defined.

Intermediate care facility for persons with developmental disabilities means a facility where shelter, food, and training or habilitation services, advice, counseling, diagnosis, treatment, care, nursing care, or related services are provided

for a period of more than twenty-four consecutive hours to four or more persons residing at such facility who have a developmental disability.

Source: Laws 2000, LB 819, § 21; Laws 2013, LB23, § 27.

71-428 Respite care service, defined.

(1) Respite care service means a person or any legal entity that provides short-term temporary care on an intermittent basis to persons with special needs when the person's primary caregiver is unavailable to provide such care.

(2) Respite care service does not include:

(a) A person or any legal entity which is licensed under the Health Care Facility Licensure Act and which provides respite care services at the licensed location;

(b) A person or legal entity which is licensed to provide child care to thirteen or more children under the Child Care Licensing Act or which is licensed as a residential child-caring agency under the Children's Residential Facilities and Placing Licensure Act;

(c) An agency that recruits, screens, or trains a person to provide respite care;

(d) An agency that matches a respite care service or other providers of respite care with a person with special needs, or refers a respite care service or other providers of respite care to a person with special needs, unless the agency receives compensation for such matching or referral from the service or provider or from or on behalf of the person with special needs;

(e) A person who provides respite care to fewer than eight unrelated persons in any seven-day period in his or her home or in the home of the recipient of the respite care; or

(f) A nonprofit agency that provides group respite care for no more than eight hours in any seven-day period.

Source: Laws 2000, LB 819, § 28; Laws 2002, LB 1062, § 40; Laws 2004, LB 1005, § 43; Laws 2005, LB 2, § 1; Laws 2013, LB265, § 39.

Cross References

Child Care Licensing Act, see section 71-1908.

Children's Residential Facilities and Placing Licensure Act, see section 71-1924.

71-434 License fees.

(1) Licensure activities under the Health Care Facility Licensure Act shall be funded by license fees. An applicant for an initial or renewal license under section 71-433 shall pay a license fee as provided in this section.

(2) License fees shall include a base fee of fifty dollars and an additional fee based on:

(a) Variable costs to the department of inspections, architectural plan reviews, and receiving and investigating complaints, including staff salaries, travel, and other similar direct and indirect costs;

(b) The number of beds available to persons residing at the health care facility;

(c) The program capacity of the health care facility or health care service; or

(d) Other relevant factors as determined by the department.

Such additional fee shall be no more than two thousand six hundred dollars for a hospital or a health clinic operating as an ambulatory surgical center, no more than two thousand dollars for an assisted-living facility, a health clinic providing hemodialysis or labor and delivery services, an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a nursing facility, or a skilled nursing facility, no more than one thousand dollars for home health agencies, hospice services, and centers for the developmentally disabled, and no more than seven hundred dollars for all other health care facilities and health care services.

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

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

(5) The department shall collect a fee from any applicant or licensee requesting an informal conference with a representative peer review organization under section 71-452 to cover all costs and expenses associated with such conference.

(6) The department shall adopt and promulgate rules and regulations for the establishment of license fees under this section.

(7) The department shall remit all license fees collected under this section to the State Treasurer for credit to the Health and Human Services Cash Fund. License fees collected under this section shall only be used for activities related to the licensure of health care facilities and health care services.

Source: Laws 2000, LB 819, § 34; Laws 2002, LB 1062, § 42; Laws 2003, LB 415, § 1; Laws 2005, LB 246, § 1; Laws 2007, LB203, § 4; Laws 2007, LB296, § 371; Laws 2013, LB23, § 28.

71-448 License; disciplinary action; grounds.

The Division of Public Health of the Department of Health and Human Services may take disciplinary action against a license issued under the Health Care Facility Licensure Act on any of the following grounds:

(1) Violation of any of the provisions of the Assisted-Living Facility Act, the Health Care Facility Licensure Act, the Nebraska Nursing Home Act, or the rules and regulations adopted and promulgated under such acts;

(2) Committing or permitting, aiding, or abetting the commission of any unlawful act;

(3) Conduct or practices detrimental to the health or safety of a person residing in, served by, or employed at the health care facility or health care service;

(4) A report from an accreditation body or public agency sanctioning, modifying, terminating, or withdrawing the accreditation or certification of the health care facility or health care service;

(5) Failure to allow an agent or employee of the Department of Health and Human Services access to the health care facility or health care service for the

purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the Department of Health and Human Services;

(6) Discrimination or retaliation against a person residing in, served by, or employed at the health care facility or health care service who has submitted a complaint or information to the Department of Health and Human Services;

(7) Discrimination or retaliation against a person residing in, served by, or employed at the health care facility or health care service who has presented a grievance or information to the office of the state long-term care ombudsman;

(8) Failure to allow a state long-term care ombudsman or an ombudsman advocate access to the health care facility or health care service for the purposes of investigation necessary to carry out the duties of the office of the state long-term care ombudsman as specified in the rules and regulations adopted and promulgated by the Department of Health and Human Services;

(9) Violation of the Emergency Box Drug Act;

(10) Failure to file a report required by section 38-1,127 or 71-552;

(11) Violation of the Medication Aide Act;

(12) Failure to file a report of suspected abuse or neglect as required by sections 28-372 and 28-711; or

(13) Violation of the Automated Medication Systems Act.

Source: Laws 2000, LB 819, § 48; Laws 2004, LB 1005, § 44; Laws 2007, LB296, § 373; Laws 2007, LB463, § 1181; Laws 2008, LB308, § 12; Laws 2011, LB591, § 4.

Cross References

Assisted-Living Facility Act, see section 71-5901.

Automated Medication Systems Act, see section 71-2444.

Emergency Box Drug Act, see section 71-2410.

Medication Aide Act, see section 71-6718.

Nebraska Nursing Home Act, see section 71-6037.

71-465 Repealed. Laws 2012, LB 782, § 253.

71-466 Religious residential facility; exemption from licensure and regulation.

Any facility which is used as a residence by members of an organization, association, order, or society organized and operated for religious purposes, which is not operated for financial gain or profit for the organization, association, order, or society, and which serves as a residence only for such members who in the exercise of their duties in the organization, association, order, or society are required to participate in congregant living within such a facility is exempt from the provisions of the Health Care Facility Licensure Act relating to licensure or regulation of assisted-living facilities, intermediate care facilities, and nursing facilities.

Source: Laws 2011, LB34, § 2.

71-467 General acute hospital; employees; influenza vaccinations; tetanus-diphtheria-pertussis vaccine; duties; record.

(1) Each general acute hospital shall take all of the following actions in accordance with the guidelines of the Centers for Disease Control and Preven-

tion of the United States Public Health Service of the United States Department of Health and Human Services as the guidelines existed on January 1, 2013:

- (a) Annually offer onsite influenza vaccinations to all hospital employees;
 - (b) Offer to all hospital employees a single dose of tetanus-diphtheria-pertussis vaccine if they have not previously received such vaccine and regardless of the time since their most recent vaccination with such vaccine; and
 - (c) Require all hospital employees to be vaccinated against influenza, tetanus, diphtheria, and pertussis, except that an employee may elect not to be vaccinated.
- (2) The hospital shall keep a record of which hospital employees receive the annual vaccination against influenza and a single dose of tetanus-diphtheria-pertussis vaccine and which hospital employees do not receive such vaccinations.
- (3) This section shall not apply in individual cases when contraindicated or if a national shortage of the vaccine exists.

Source: Laws 2011, LB542, § 2; Laws 2013, LB458, § 1; Laws 2014, LB859, § 1.
Effective date July 18, 2014.

71-468 Onsite vaccinations for influenza and pneumococcal disease.

In order to prevent, detect, and control pneumonia and influenza outbreaks in Nebraska, each general acute hospital, intermediate care facility, nursing facility, and skilled nursing facility shall annually, beginning no later than October 1 and ending on the following April 1, offer onsite vaccinations for influenza and pneumococcal disease to all residents and to all inpatients prior to discharge, pursuant to procedures of the facility and in accordance with the recommendations of the advisory committee on immunization practices of the Centers for Disease Control and Prevention of the United States Public Health Service of the United States Department of Health and Human Services as the recommendations existed on January 1, 2012. This section shall not apply in individual cases when contraindicated or if a national shortage of the vaccine exists. Nothing in this section shall be construed to require any facility listed in this section to cover the cost of a vaccination provided pursuant to this section.

Source: Laws 2012, LB1077, § 2; Laws 2014, LB859, § 2.
Effective date July 18, 2014.

71-469 Onsite vaccinations for diphtheria, tetanus, and pertussis.

In order to prevent, detect, and control diphtheria, tetanus, and pertussis in Nebraska, each general acute hospital, intermediate care facility, nursing facility, and skilled nursing facility shall offer onsite vaccinations for diphtheria, tetanus, and pertussis to all residents and to all inpatients prior to discharge, pursuant to procedures of the facility and in accordance with the recommendations of the advisory committee on immunization practices of the Centers for Disease Control and Prevention of the United States Public Health Service of the United States Department of Health and Human Services as the recommendations existed on January 1, 2013. This section shall not apply in individual cases when contraindicated or if a national shortage of the vaccine exists.

Nothing in this section shall be construed to require any facility listed in this section to bear the cost of a vaccination provided pursuant to this section.

Source: Laws 2013, LB459, § 2; Laws 2014, LB859, § 3.
Effective date July 18, 2014.

ARTICLE 5

DISEASES

(a) CONTAGIOUS, INFECTIOUS, AND MALIGNANT DISEASES

Section

- 71-503.01. Reports required; confidentiality; limitations on use; immunity.
- 71-503.02. Chlamydia or gonorrhea; prescription oral antibiotic drugs; powers of medical professionals; restrictions.
- 71-503.03. Chlamydia or gonorrhea; prescription oral antibiotic drugs; rules and regulations.

(b) ALZHEIMER'S SPECIAL CARE DISCLOSURE ACT

- 71-516.04. Facility; disclosures required; department; duties.

(e) IMMUNIZATION AND VACCINES

- 71-529. Statewide immunization action plan; department; powers.

(f) HUMAN IMMUNODEFICIENCY VIRUS INFECTION

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(h) EXCHANGE OF IMMUNIZATION INFORMATION

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- 71-540. Immunization information; nondisclosure.
- 71-541. Immunization information system; immunization information; access; fee.
- 71-541.01. Immunization information system; established; purpose; access to records authorized.
- 71-542. Immunization information system; immunization information; confidentiality; violation; penalty.
- 71-543. Rules and regulations.
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(k) SYNDROMIC SURVEILLANCE PROGRAM

- 71-552. Syndromic surveillance program; development; department set standards for reporting by hospitals; additional powers of department; use, confidentiality, and immunity; failure to make report; grounds for discipline.

(l) NEWBORN CRITICAL CONGENITAL HEART DISEASE SCREENING ACT

- 71-553. Act, how cited.
- 71-554. Legislative findings.
- 71-555. Terms, defined.
- 71-556. Newborn; critical congenital heart disease screening; responsibilities.
- 71-557. Department; duties; rules and regulations.

(a) CONTAGIOUS, INFECTIOUS, AND MALIGNANT DISEASES

71-503.01 Reports required; confidentiality; limitations on use; immunity.

(1) Whenever any statute of the state, any ordinance or resolution of a municipal corporation or political subdivision enacted pursuant to statute, or any rule or regulation of an administrative agency adopted and promulgated pursuant to statute allows medical practitioners or other persons to prescribe, provide, or dispense prescription drugs pursuant to sections 71-503.02 and 71-503.03 or requires medical practitioners or other persons to report cases of communicable diseases, including sexually transmitted diseases and other re-

portable diseases, illnesses, or poisonings or to give notification of positive laboratory findings to the Department of Health and Human Services or any county or city board of health, local public health department established pursuant to sections 71-1626 to 71-1636, city health department, local health agency, or state or local public official exercising the duties and responsibilities of any board of health or health department, such reports or notifications and the resulting investigations and such prescription, provision, or dispensing of prescription drugs and records pertaining thereto shall be confidential except as provided in this section, shall not be subject to subpoena, and shall be privileged and inadmissible in evidence in any legal proceeding of any kind or character and shall not be disclosed to any other department or agency of the State of Nebraska.

(2) In order to further the protection of public health, such reports, notifications, and prescription, provision, or dispensing of prescription drugs may be disclosed by the Department of Health and Human Services, the official local health department, and the person making such reports or notifications to the Centers for Disease Control and Prevention of the Public Health Service of the United States Department of Health and Human Services or its successor in such a manner as to ensure that the identity of any individual cannot be ascertained except as required for delivery of such prescription drugs pursuant to sections 71-503.02 and 71-503.03. To further protect the public health, the Department of Health and Human Services, the official local health department, and the person making the report or notification may disclose to the official state and local health departments of other states, territories, and the District of Columbia such reports and notifications, including sufficient identification and information so as to ensure that such investigations as deemed necessary are made.

(3) The appropriate board, health department, agency, or official may: (a) Publish analyses of reports, information, and the notifications described in subsection (1) of this section for scientific and public health purposes in such a manner as to ensure that the identity of any individual concerned cannot be ascertained; (b) discuss the report or notification with the attending physician; and (c) make such investigation as deemed necessary.

(4) Any medical practitioner, any official health department, the Department of Health and Human Services, or any other person making such reports or notifications or prescribing, providing, or dispensing such prescription drugs pursuant to sections 71-503.02 and 71-503.03 shall be immune from suit for slander or libel or breach of privileged communication based on any statements contained in such reports and notifications or pursuant to prescription, provision, or dispensing of such prescription drugs.

Source: Laws 1967, c. 441, § 2, p. 1381; Laws 1986, LB 763, § 3; Laws 1988, LB 1012, § 8; Laws 1991, LB 703, § 25; Laws 1994, LB 819, § 3; Laws 1996, LB 1044, § 494; Laws 1997, LB 197, § 4; Laws 2005, LB 301, § 13; Laws 2007, LB296, § 382; Laws 2013, LB528, § 3.

71-503.02 Chlamydia or gonorrhea; prescription oral antibiotic drugs; powers of medical professionals; restrictions.

If a physician, a physician assistant, a nurse practitioner, or a certified nurse midwife licensed under the Uniform Credentialing Act diagnoses a patient as

having chlamydia or gonorrhea, the physician may prescribe, provide, or dispense pursuant to section 38-2850 and the physician assistant, nurse practitioner, or certified nurse midwife may prescribe or provide drug samples of prescription oral antibiotic drugs to that patient's sexual partner or partners without examination of that patient's partner or partners. Adequate directions for use and medication guides, where applicable, shall be provided along with additional prescription oral antibiotic drugs for any additional partner. The physician, physician assistant, nurse practitioner, or certified nurse midwife shall at the same time provide written information about chlamydia and gonorrhea to the patient for the patient to provide to the partner or partners. The oral antibiotic drugs prescribed, provided, or dispensed pursuant to this section must be stored, dispensed, and labeled in accordance with federal and state pharmacy laws and regulations. Prescriptions for the patient's sexual partner or partners must include the partner's name. If the infected patient is unwilling or unable to deliver such prescription oral antibiotic drugs to his or her sexual partner or partners, such physician may prescribe, provide, or dispense pursuant to section 38-2850 and such physician assistant, nurse practitioner, or certified nurse midwife may prescribe or provide samples of the prescription oral antibiotic drugs for delivery to such partner, if such practitioner has sufficient locating information.

Source: Laws 2013, LB528, § 1.

Cross References

Uniform Credentialing Act, see section 38-101.

71-503.03 Chlamydia or gonorrhea; prescription oral antibiotic drugs; rules and regulations.

The Department of Health and Human Services may adopt and promulgate rules and regulations to carry out section 71-503.02.

Source: Laws 2013, LB528, § 2.

(b) ALZHEIMER'S SPECIAL CARE DISCLOSURE ACT

71-516.04 Facility; disclosures required; department; duties.

Any facility which offers to provide or provides care for persons with Alzheimer's disease, dementia, or a related disorder by means of an Alzheimer's special care unit shall disclose the form of care or treatment provided that distinguishes such form as being especially applicable to or suitable for such persons. The disclosure shall be made to the Department of Health and Human Services and to any person seeking placement within an Alzheimer's special care unit. The department shall examine all such disclosures in the records of the department as part of the facility's license renewal procedure at the time of licensure or relicensure.

The information disclosed shall explain the additional care provided in each of the following areas:

(1) The Alzheimer's special care unit's written statement of its overall philosophy and mission which reflects the needs of residents afflicted with Alzheimer's disease, dementia, or a related disorder;

(2) The process and criteria for placement in, transfer to, or discharge from the unit;

(3) The process used for assessment and establishment of the plan of care and its implementation, including the method by which the plan of care evolves and is responsive to changes in condition;

(4) Staff training and continuing education practices which shall include, but not be limited to, four hours annually for direct care staff. Such training shall include topics pertaining to the form of care or treatment set forth in the disclosure described in this section. The requirement in this subdivision shall not be construed to increase the aggregate hourly training requirements of the Alzheimer's special care unit;

(5) The physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;

(6) The frequency and types of resident activities;

(7) The involvement of families and the availability of family support programs; and

(8) The costs of care and any additional fees.

Source: Laws 1994, LB 1210, § 165; Laws 1996, LB 1044, § 501; Laws 2007, LB296, § 389; Laws 2010, LB849, § 23.

(e) IMMUNIZATION AND VACCINES

71-529 Statewide immunization action plan; department; powers.

The Department of Health and Human Services may participate in the national efforts described in sections 71-527 and 71-528 and may develop a statewide immunization action plan which is comprehensive in scope and reflects contributions from a broad base of providers and consumers. In order to implement the statewide immunization action plan, the department may:

(1) Actively seek the participation and commitment of the public, health care professionals and facilities, the educational community, and community organizations in a comprehensive program to ensure that the state's children are appropriately immunized;

(2) Apply for and receive public and private awards to purchase vaccines and to administer a statewide comprehensive program;

(3) Provide immunization information and education to the public, parents, health care providers, and educators to establish and maintain a high level of awareness and demand for immunization by parents;

(4) Assist parents, health care providers, and communities in developing systems, including demonstration and pilot projects, which emphasize well-child care and the use of private practitioners and which improve the availability of immunization and improve management of immunization delivery so as to ensure the adequacy of the vaccine delivery system;

(5) Evaluate the effectiveness of these statewide efforts, conduct ongoing measurement of children's immunization status, identify children at special risk for deficiencies in immunization, and report on the activities of the statewide immunization program annually to the Legislature and the citizens of Nebraska. The report submitted to the Legislature shall be submitted electronically;

(6) Recognize persons who volunteer their efforts towards achieving the goal of providing immunization of the children of Nebraska and in meeting the

Healthy People 2000 objective of series-complete immunization coverage for ninety percent or more of United States children by their second birthday;

(7) Establish a statewide program to immunize Nebraska children from birth up to six years of age against measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, tetanus, hepatitis B, and haemophilus influenzae type B. The program shall serve children who are not otherwise eligible for childhood immunization coverage with medicaid or other federal funds or are not covered by private third-party payment; and

(8) Contract to provide vaccine under the statewide program authorized under subdivision (7) of this section without cost to health care providers subject to the following conditions:

(a) In order to receive vaccine without cost, health care providers shall not charge for the cost of the vaccine. Health care providers may charge a fee for the administration of the vaccine but may not deny service because of the parent's or guardian's inability to pay such fee. Fees for administration of the vaccine shall be negotiated between the department and the health care provider, shall be uniform among participating providers, and shall be no more than the cost ceiling for the region in which Nebraska is included as set by the Secretary of the United States Department of Health and Human Services for the Vaccines for Children Program authorized by the Omnibus Budget Reconciliation Act of 1993;

(b) Health care providers shall administer vaccines according to the schedule recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention or by the American Academy of Pediatrics unless in the provider's medical judgment, subject to accepted medical practice, such compliance is medically inappropriate; and

(c) Health care providers shall maintain records on immunizations as prescribed by this section for inspection and audit by the Department of Health and Human Services or the Auditor of Public Accounts, including responses by parents or guardians to simple screening questions related to payment coverage by public or private third-party payors, identification of the administration fee as separate from any other cost charged for other services provided at the same time the vaccination service is provided, and other information as determined by the department to be necessary to comply with subdivision (5) of this section. Such immunization records may also be used for information exchange as provided in sections 71-539 to 71-544.

Source: Laws 1992, LB 431, § 4; Laws 1994, LB 1223, § 32; Laws 1996, LB 1044, § 508; Laws 1998, LB 1063, § 17; Laws 2005, LB 301, § 20; Laws 2007, LB296, § 396; Laws 2011, LB591, § 5; Laws 2012, LB782, § 103.

(f) HUMAN IMMUNODEFICIENCY VIRUS INFECTION

71-531 Test; written informed consent required; anonymous testing; exemptions.

(1)(a) No person may be tested for the presence of the human immunodeficiency virus infection unless he or she has given written informed consent for the performance of such test. The written informed consent shall provide an explanation of human immunodeficiency virus infection and the meaning of both positive and negative test results.

(b) If a person signs a general consent form for the performance of medical tests or procedures which informs the person that a test for the presence of the human immunodeficiency virus infection may be performed and that the person may refuse to have such test performed, the signing of an additional consent for the specific purpose of consenting to a test related to human immunodeficiency virus is not required during the time in which the general consent form is in effect.

(2) If a person is unable to provide consent, the person's legal representative may provide consent. If the person's legal representative cannot be located or is unavailable, a health care provider may authorize the test when the test results are necessary for diagnostic purposes to provide appropriate medical care.

(3) A person seeking a human immunodeficiency virus test shall have the right to remain anonymous. A health care provider shall confidentially refer such person to a site which provides anonymous testing.

(4) This section shall not apply to:

(a) The performance by a health care provider or a health facility of a human immunodeficiency virus test when the health care provider or health facility procures, processes, distributes, or uses a human body part for a purpose specified under the Revised Uniform Anatomical Gift Act and such test is necessary to assure medical acceptability of such gift for the purposes intended;

(b) The performance by a health care provider or a health facility of a human immunodeficiency virus test when such test is performed with the consent and written authorization of the person being tested and such test is for insurance underwriting purposes, written information about the human immunodeficiency virus is provided, including, but not limited to, the identification and reduction of risks, the person is informed of the result of such test, and when the result is positive, the person is referred for posttest counseling;

(c) The performance of a human immunodeficiency virus test by licensed medical personnel of the Department of Correctional Services when the subject of the test is committed to such department. Posttest counseling shall be required for the subject if the test is positive. A person committed to the Department of Correctional Services shall be informed by the department (i) if he or she is being tested for the human immunodeficiency virus, (ii) that education shall be provided to him or her about the human immunodeficiency virus, including, but not limited to, the identification and reduction of risks, and (iii) of the test result and the meaning of such result;

(d) Human immunodeficiency virus home collection kits licensed by the federal Food and Drug Administration; or

(e) The performance of a human immunodeficiency virus test performed pursuant to section 29-2290 or sections 71-507 to 71-513 or 71-514.01 to 71-514.05.

Source: Laws 1994, LB 819, § 5; Laws 1997, LB 194, § 1; Laws 2009, LB288, § 33; Laws 2010, LB1036, § 35.

Cross References

Revised Uniform Anatomical Gift Act, see section 71-4824.

(h) EXCHANGE OF IMMUNIZATION INFORMATION

71-539 Legislative intent.

It is the intent of the Legislature that sections 71-539 to 71-544 provide for the exchange of immunization information between health care professionals, health care facilities, health care services, schools, postsecondary educational institutions, licensed child care facilities, electronic health-record systems, public health departments, health departments of other states, Indian health services, and tribes for the purpose of protecting the public health by facilitating age-appropriate immunizations which will minimize the risk of outbreak of vaccine-preventable diseases.

Source: Laws 1998, LB 1063, § 11; Laws 2011, LB591, § 6.

71-540 Immunization information; nondisclosure.

All immunization information may be shared with the Department of Health and Human Services and entered into the central data base created pursuant to section 71-541.01. A patient or, if the patient is a minor, the patient's parent or legal guardian may deny access under sections 71-539 to 71-544 to the patient's immunization information by signing a nondisclosure form with the professional or entity which provided the immunization and with the department. The nondisclosure form shall be kept with the immunization information of the patient, and such immunization information is considered restricted immunization information.

Source: Laws 1998, LB 1063, § 12; Laws 2011, LB591, § 8.

71-541 Immunization information system; immunization information; access; fee.

Any person or entity authorized under section 71-541.01 to access immunization information in the immunization information system established pursuant to section 71-541.01 may access such information pursuant to rules and regulations of the Department of Health and Human Services for purposes of direct patient care, public health activities, or enrollment in school or child care services. The unrestricted immunization information shared may include, but is not limited to, the patient's name and date of birth, the dates and vaccine types administered, and any immunization information obtained from other sources. A person or entity listed in section 71-539 which provides immunization information to a licensed child care program, a school, or a postsecondary educational institution may charge a reasonable fee to recover the cost of providing such immunization information.

Source: Laws 1998, LB 1063, § 13; Laws 2000, LB 1115, § 25; Laws 2005, LB 256, § 34; Laws 2007, LB296, § 398; Laws 2011, LB591, § 9.

71-541.01 Immunization information system; established; purpose; access to records authorized.

The Department of Health and Human Services shall establish an immunization information system for the purpose of providing a central data base of immunization information which can be accessed pursuant to rules and regulations of the department by any person or entity listed in section 71-539, by a patient, and by a patient's parent or legal guardian if the patient is a minor or under guardianship. In order to facilitate operation of the immunization

information system, the department shall provide the system with access to all records of the department, including, but not limited to, vital records.

Source: Laws 2011, LB591, § 7.

71-542 Immunization information system; immunization information; confidentiality; violation; penalty.

Immunization information in the immunization information system established pursuant to section 71-541.01 is confidential, and unrestricted immunization information may only be accessed pursuant to rules and regulations of the Department of Health and Human Services. Unauthorized public disclosure of such confidential information is a Class III misdemeanor.

Source: Laws 1998, LB 1063, § 14; Laws 2004, LB 1005, § 54; Laws 2011, LB591, § 10.

71-543 Rules and regulations.

The Department of Health and Human Services may adopt and promulgate rules and regulations to implement sections 71-539 to 71-544, including procedures and methods for and limitations on access to and security and confidentiality of the immunization information.

Source: Laws 1998, LB 1063, § 15; Laws 2007, LB296, § 399; Laws 2011, LB591, § 11.

71-544 Immunity.

Any person who receives or releases immunization information in the form and manner prescribed in sections 71-539 to 71-544 and any rules and regulations which may be adopted and promulgated pursuant to sections 71-539 to 71-544 is not civilly or criminally liable for such receipt or release.

Source: Laws 1998, LB 1063, § 16; Laws 2011, LB591, § 12.

(k) SYNDROMIC SURVEILLANCE PROGRAM

71-552 Syndromic surveillance program; development; department set standards for reporting by hospitals; additional powers of department; use, confidentiality, and immunity; failure to make report; grounds for discipline.

(1) For purposes of protecting the public health and tracking the impact of disease prevention strategies intended to lower the cost of health care, the Department of Health and Human Services shall develop a syndromic surveillance program that respects patient privacy and benefits from advances in both electronic health records and electronic health information exchange. The syndromic surveillance program shall include the monitoring, detection, and investigation of public health threats from (a) intentional or accidental use or misuse of chemical, biological, radiological, or nuclear agents, (b) clusters or outbreaks of infectious or communicable diseases, and (c) noninfectious causes of illness.

(2) The department shall adopt and promulgate rules and regulations setting standards for syndromic surveillance reporting by hospitals. The standards shall specify (a) the syndromic surveillance data elements required to be reported for all encounters, which shall include at a minimum the date of the encounter and the patient's gender, date of birth, chief complaint or reason for

encounter, home zip code, unique record identifier, and discharge diagnoses and (b) the manner of reporting.

(3) The department may require, by rule and regulation, syndromic surveillance reporting by other health care facilities or any person issued a credential by the department.

(4) The department shall establish, by rule and regulation, a schedule for the implementation of full electronic reporting of all syndromic surveillance data elements. The schedule shall take into consideration the number of data elements already reported by the facility or person, the capacity of the facility or person to electronically report the remaining elements, the funding available for implementation, and other relevant factors, including improved efficiencies and resulting benefits to the reporting facility or person.

(5) The use, confidentiality, and immunity provisions of section 71-503.01 apply to syndromic surveillance data reports.

(6) Failure to provide a report under this section or the rules and regulations is grounds for discipline of a credential issued by the department.

Source: Laws 2011, LB591, § 1.

(I) NEWBORN CRITICAL CONGENITAL HEART DISEASE SCREENING ACT

71-553 Act, how cited.

Sections 71-553 to 71-557 shall be known and may be cited as the Newborn Critical Congenital Heart Disease Screening Act.

Source: Laws 2013, LB225, § 1.

71-554 Legislative findings.

The Legislature finds that:

(1) Critical congenital heart disease is among the most common birth defects;
(2) Critical congenital heart disease is the leading cause of death for infants born with a birth defect;

(3) A major cause of infant mortality as a result of critical congenital heart disease is that a significant number of newborns affected are not diagnosed in the newborn nursery as having critical congenital heart disease; and

(4) An effective mechanism for critical congenital heart disease screening of newborns can reduce infant mortality.

Source: Laws 2013, LB225, § 2.

71-555 Terms, defined.

For purposes of the Newborn Critical Congenital Heart Disease Screening Act:

(1) Birthing facility means a hospital or other health care facility in this state which provides birthing and newborn care services;

(2) Critical congenital heart disease screening means a testing procedure or procedures intended to detect hypoplastic left heart syndrome, pulmonary atresia, tetralogy of Fallot, total anomalous pulmonary venous return, transposition of the great arteries, tricuspid atresia, and truncus arteriosus;

- (3) Department means the Department of Health and Human Services;
- (4) Newborn means a child from birth through twenty-nine days old; and
- (5) Parent means a natural parent, a stepparent, an adoptive parent, a legal guardian, or any other legal custodian of a child.

Source: Laws 2013, LB225, § 3.

71-556 Newborn; critical congenital heart disease screening; responsibilities.

(1) All newborns in this state shall undergo critical congenital heart disease screening in accordance with standards determined in rules and regulations adopted and promulgated by the department.

(2) For deliveries in a birthing facility, the birthing facility shall develop and implement policies to cause the screening of the newborn and the reporting of the results to the newborn's health care provider in accordance with standards adopted pursuant to subsection (1) of this section.

(3) For deliveries that are planned outside of a birthing facility, the prenatal care provider shall inform the parent of the importance of critical congenital heart disease screening and the requirement for all newborns to be screened. The parent shall be responsible for causing the screening to be performed within the period and in the manner prescribed by the department.

(4) For a birth that does not take place in a birthing facility, whether or not there is a prenatal care provider, and the newborn is not admitted to a birthing facility, the person registering such birth shall be responsible for obtaining critical congenital heart disease screening for the newborn within the period and in the manner prescribed by the department.

Source: Laws 2013, LB225, § 4.

71-557 Department; duties; rules and regulations.

The department shall:

(1) In consultation with a panel of persons having expertise in the field of critical congenital heart disease screening, develop approved methods of critical congenital heart disease screening;

(2) Apply for all available federal funding to carry out the Newborn Critical Congenital Heart Disease Screening Act; and

(3) Adopt and promulgate rules and regulations necessary to implement the act.

Source: Laws 2013, LB225, § 5.

ARTICLE 6

VITAL STATISTICS

Section

- 71-605. Death certificate; cause of death; sudden infant death syndrome; how treated; cremation, disinterment, or transit permits; how executed; filing; requirements.
- 71-612. Department; certificates; copies; fees; waiver of fees, when; search of death certificates; fee; access; petty cash fund; authorized.
- 71-615. Annulments or dissolutions of marriage; monthly reports; duty of clerk of district court.

71-605 Death certificate; cause of death; sudden infant death syndrome; how treated; cremation, disinterment, or transit permits; how executed; filing; requirements.

(1) The funeral director and embalmer in charge of the funeral of any person dying in the State of Nebraska shall cause a certificate of death to be filled out with all the particulars contained in the standard form adopted and promulgated by the department. Such standard form shall include a space for veteran status and the period of service in the armed forces of the United States and a statement of the cause of death made by a person holding a valid license as a physician, physician assistant, or nurse practitioner who last attended the deceased. The standard form shall also include the deceased's social security number. Death and fetal death certificates shall be completed by the funeral directors and embalmers and physicians, physician assistants, or nurse practitioners for the purpose of filing with the department and providing child support enforcement information pursuant to section 43-3340.

(2) The physician, physician assistant, or nurse practitioner shall have the responsibility and duty to complete and sign in his or her own handwriting or by electronic means pursuant to section 71-603.01, within twenty-four hours from the time of death, that part of the certificate of death entitled medical certificate of death. In the case of a death when no person licensed as a physician, physician assistant, or nurse practitioner was in attendance, the funeral director and embalmer shall refer the case to the county attorney who shall have the responsibility and duty to complete and sign the death certificate in his or her own handwriting or by electronic means pursuant to section 71-603.01.

No cause of death shall be certified in the case of the sudden and unexpected death of a child between the ages of one week and three years until an autopsy is performed at county expense by a qualified pathologist pursuant to section 23-1824. The parents or guardian shall be notified of the results of the autopsy by their physician, physician assistant, nurse practitioner, community health official, or county coroner within forty-eight hours. The term sudden infant death syndrome shall be entered on the death certificate as the principal cause of death when the term is appropriately descriptive of the pathology findings and circumstances surrounding the death of a child.

If the circumstances show it possible that death was caused by neglect, violence, or any unlawful means, the case shall be referred to the county attorney for investigation and certification. The county attorney shall, within twenty-four hours after taking charge of the case, state the cause of death as ascertained, giving as far as possible the means or instrument which produced the death. All death certificates shall show clearly the cause, disease, or sequence of causes ending in death. If the cause of death cannot be determined within the period of time stated above, the death certificate shall be filed to establish the fact of death. As soon as possible thereafter, and not more than six weeks later, supplemental information as to the cause, disease, or sequence of causes ending in death shall be filed with the department to complete the record. For all certificates stated in terms that are indefinite, insufficient, or unsatisfactory for classification, inquiry shall be made to the person completing the certificate to secure the necessary information to correct or complete the record.

(3) A completed death certificate shall be filed with the department within five business days after the date of death. If it is impossible to complete the certificate of death within five business days, the funeral director and embalmer shall notify the department of the reason for the delay and file the certificate as soon as possible.

(4) Before any dead human body may be cremated, a cremation permit shall first be signed by the county attorney, or by his or her authorized representative as designated by the county attorney in writing, of the county in which the death occurred on a form prescribed and furnished by the department.

(5) A permit for disinterment shall be required prior to disinterment of a dead human body. The permit shall be issued by the department to a licensed funeral director and embalmer upon proper application. The request for disinterment shall be made by the person listed in section 30-2223 or a county attorney on a form furnished by the department. The application shall be signed by the funeral director and embalmer who will be directly supervising the disinterment. When the disinterment occurs, the funeral director and embalmer shall sign the permit giving the date of disinterment and file the permit with the department within ten days of the disinterment.

(6) When a request is made under subsection (5) of this section for the disinterment of more than one dead human body, an order from a court of competent jurisdiction shall be submitted to the department prior to the issuance of a permit for disinterment. The order shall include, but not be limited to, the number of bodies to be disinterred if that number can be ascertained, the method and details of transportation of the disinterred bodies, the place of reinterment, and the reason for disinterment. No sexton or other person in charge of a cemetery shall allow the disinterment of a body without first receiving from the department a disinterment permit properly completed.

(7) No dead human body shall be removed from the state for final disposition without a transit permit issued by the funeral director and embalmer having charge of the body in Nebraska, except that when the death is subject to investigation, the transit permit shall not be issued by the funeral director and embalmer without authorization of the county attorney of the county in which the death occurred. No agent of any transportation company shall allow the shipment of any body without the properly completed transit permit prepared in duplicate.

(8) The interment, disinterment, or reinterment of a dead human body shall be performed under the direct supervision of a licensed funeral director and embalmer, except that hospital disposition may be made of the remains of a child born dead pursuant to section 71-20,121.

(9) All transit permits issued in accordance with the law of the place where the death occurred in a state other than Nebraska shall be signed by the funeral director and embalmer in charge of burial and forwarded to the department within five business days after the interment takes place.

Source: Laws 1921, c. 253, § 2, p. 863; C.S.1922, § 8233; Laws 1927, c. 166, § 3, p. 449; C.S.1929, § 71-2405; R.S.1943, § 71-605; Laws 1949, c. 202, § 1, p. 585; Laws 1953, c. 241, § 1, p. 830; Laws 1961, c. 341, § 3, p. 1091; Laws 1965, c. 418, § 3, p. 1335; Laws 1973, LB 29, § 1; Laws 1978, LB 605, § 1; Laws 1985, LB 42, § 3; Laws 1989, LB 344, § 10; Laws 1993, LB 187, § 8; Laws 1996, LB 1044, § 517; Laws 1997, LB 307, § 137; Laws 1997, LB 752, § 172; Laws 1999, LB 46, § 4; Laws 2003, LB 95, § 33; Laws 2005, LB 54, § 14; Laws 2005, LB 301, § 25; Laws 2007, LB463, § 1184; Laws 2009, LB195, § 68; Laws 2012, LB1042, § 4; Laws 2014, LB998, § 14.
Effective date April 10, 2014.

Cross References

For authority of chiropractors to sign death certificates, see section 38-811.

For authority of physician assistants to sign death certificates, see section 38-2047.

Organ and tissue donation, notation required, see section 71-4816.

71-612 Department; certificates; copies; fees; waiver of fees, when; search of death certificates; fee; access; petty cash fund; authorized.

(1) The department, as the State Registrar, shall preserve permanently and index all certificates received. The department shall supply to any applicant for any proper purpose, as defined by rules and regulations of the department, a certified copy of the record of any birth, death, marriage, annulment, or dissolution of marriage or an abstract of marriage. The department shall supply a copy of a public vital record for viewing purposes at its office upon an application signed by the applicant and upon proof of the identity of the applicant. The application may include the name, address, and telephone number of the applicant, purpose for viewing each record, and other information as may be prescribed by the department by rules and regulations to protect the integrity of vital records and prevent their fraudulent use. Except as provided in subsections (2), (3), (5), (6), and (7) of this section, the department shall be entitled to charge and collect in advance a fee of sixteen dollars to be paid by the applicant for each certified copy or abstract of marriage supplied to the applicant or for any search made at the applicant's request for access to or a certified copy of any record or abstract of marriage, whether or not the record or abstract is found on file with the department.

(2) The department shall, free of charge, search for and furnish a certified copy of any record or abstract of marriage on file with the department upon the request of (a) the United States Department of Veterans Affairs or any lawful service organization empowered to represent veterans if the copy of the record or abstract of marriage is to be issued, for the welfare of any member or veteran of the armed forces of the United States or in the interests of any member of his or her family, in connection with a claim growing out of service in the armed forces of the nation or (b) the Military Department.

(3) The department may, free of charge, search for and furnish a certified copy of any record or abstract of marriage on file with the department when in the opinion of the department it would be a hardship for the claimant of old age, survivors, or disability benefits under the federal Social Security Act to pay the fee provided in this section.

(4) A strict account shall be kept of all funds received by the department. Funds received pursuant to subsections (1), (5), (6), and (8) of this section shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money credited to the fund pursuant to this section shall be used for the purpose of administering the laws relating to vital statistics and may be used to create a petty cash fund administered by the department to facilitate the payment of refunds to individuals who apply for copies or abstracts of records. The petty cash fund shall be subject to section 81-104.01, except that the amount in the petty cash fund shall not be less than twenty-five dollars nor more than one thousand dollars.

(5) The department shall, upon request, conduct a search of death certificates for stated individuals for the Nebraska Medical Association or any of its allied medical societies or any inhospital staff committee pursuant to sections 71-3401 to 71-3403. If such death certificate is found, the department shall provide a

noncertified copy. The department shall charge a fee for each search or copy sufficient to cover its actual direct costs, except that the fee shall not exceed three dollars per individual search or copy requested.

(6) The department may permit use of data from vital records for statistical or research purposes under section 71-602 or disclose data from certificates or records to federal, state, county, or municipal agencies of government for use in administration of their official duties and charge and collect a fee that will recover the department's cost of production of the data. The department may provide access to public vital records for viewing purposes by electronic means, if available, under security provisions which shall assure the integrity and security of the records and data base and shall charge and collect a fee that shall recover the department's costs.

(7) In addition to the fees charged under subsection (1) of this section, the department shall charge and collect an additional fee of one dollar for any certified copy of the record of any birth or for any search made at the applicant's request for access to or a certified copy of any such record, whether or not the record is found on file with the department. Any county containing a city of the metropolitan class which has an established city-county or county health department pursuant to sections 71-1626 to 71-1636 which has an established system of registering births and deaths shall charge and collect in advance a fee of one dollar for any certified copy of the record of any birth or for any search made at the applicant's request for such record, whether or not the record is found on file with the county. All fees collected under this subsection shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund.

(8) The department shall not charge other state agencies the fees authorized under subsections (1) and (7) of this section for automated review of any certificates or abstracts of marriage. The department shall charge and collect a fee from other state agencies for such automated review that will recover the department's cost.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 14, p. 784; Laws 1921, c. 73, § 1, p. 272; C.S.1922, § 8244; Laws 1927, c. 166, § 9, p. 451; C.S.1929, § 71-2416; Laws 1941, c. 140, § 10, p. 554; C.S.Supp.,1941, § 71-2416; Laws 1943, c. 147, § 1, p. 532; R.S. 1943, § 71-612; Laws 1951, c. 229, § 1, p. 830; Laws 1959, c. 323, § 1, p. 1180; Laws 1963, c. 410, § 1, p. 1330; Laws 1965, c. 418, § 6, p. 1338; Laws 1965, c. 419, § 2, p. 1342; Laws 1973, LB 583, § 8; Laws 1983, LB 617, § 14; Laws 1985, LB 42, § 7; Laws 1986, LB 333, § 9; Laws 1989, LB 344, § 12; Laws 1991, LB 703, § 30; Laws 1992, LB 1019, § 50; Laws 1993, LB 536, § 63; Laws 1995, LB 406, § 32; Laws 1996, LB 1044, § 524; Laws 1997, LB 307, § 140; Laws 2002, Second Spec. Sess., LB 48, § 3; Laws 2004, LB 1005, § 56; Laws 2006, LB 994, § 86; Laws 2006, LB 1115, § 39; Laws 2007, LB296, § 413; Laws 2014, LB994, § 1. Operative date July 1, 2014.

71-615 Annulments or dissolutions of marriage; monthly reports; duty of clerk of district court.

On or before the fifth day of each month, the clerk of the district court of each county shall make and return to the department, upon suitable forms

furnished by the department, a statement of each action for annulment or dissolution of marriage granted in the court of which he or she is clerk during the preceding calendar month. The information requested by the department shall be furnished by the plaintiff or his or her legal representative and presented to the clerk of the court with the complaint. If, after reasonable attempts are made by the plaintiff or his or her legal representative to attain such information, the information is unavailable, the designation unknown shall be accepted by the department. If no annulments or dissolutions of marriage were granted in the county during the preceding month, a card furnished by the department indicating such information shall be submitted on or before the fifth day of each month to the department.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 18, p. 785; C.S.1922, § 8248; Laws 1927, c. 166, § 11, p. 452; C.S.1929, § 71-2419; R.S.1943, § 71-615; Laws 1959, c. 323, § 3, p. 1181; Laws 1967, c. 443, § 2, p. 1384; Laws 1967, c. 444, § 2, p. 1386; Laws 1977, LB 73, § 2; Laws 1989, LB 344, § 13; Laws 1996, LB 1044, § 526; Laws 1996, LB 1296, § 28; Laws 1997, LB 229, § 40; Laws 2007, LB296, § 415; Laws 2012, LB904, § 1.

ARTICLE 7 WOMEN'S HEALTH

Section
71-707. Report.

71-707 Report.

The Department of Health and Human Services shall issue an annual report to the Governor and the Legislature on September 1 for the preceding fiscal year's activities of the Women's Health Initiative of Nebraska. The report submitted to the Legislature shall be submitted electronically. The report shall include progress reports on any programs, activities, or educational promotions that were undertaken by the initiative. The report shall also include a status report on women's health in Nebraska and any results achieved by the initiative.

Source: Laws 2000, LB 480, § 7; Laws 2005, LB 301, § 34; Laws 2007, LB296, § 453; Laws 2012, LB782, § 104.

ARTICLE 8 BEHAVIORAL HEALTH SERVICES

Section
71-801. Nebraska Behavioral Health Services Act; act, how cited.
71-802. Purposes of act.
71-804. Terms, defined.
71-806. Division; powers and duties; rules and regulations.
71-809. Regional behavioral health authority; behavioral health services; powers and duties.
71-810. Division; community-based behavioral health services; duties; reduce or discontinue regional center behavioral health services; powers and duties.
71-816. Repealed. Laws 2013, LB 6, § 16.
71-817. Transferred to section 9-1006.
71-824. Post-adoption and post-guardianship case management services; notice; administration; evaluation.
71-825. Annual report; contents.

Section

- 71-827. Children's Behavioral Health Oversight Committee of the Legislature; created; members; duties; meetings; report.
- 71-830. Behavioral Health Education Center; created; administration; duties; report.
- 71-831. Contracts and agreements; department; duties.

71-801 Nebraska Behavioral Health Services Act; act, how cited.

Sections 71-801 to 71-831 shall be known and may be cited as the Nebraska Behavioral Health Services Act.

Source: Laws 2004, LB 1083, § 1; Laws 2006, LB 994, § 91; Laws 2009, LB154, § 17; Laws 2009, LB603, § 3; Laws 2012, LB1158, § 3.

71-802 Purposes of act.

The purposes of the Nebraska Behavioral Health Services Act are to: (1) Reorganize statutes relating to the provision of publicly funded behavioral health services; (2) provide for the organization and administration of the public behavioral health system within the department; (3) rename mental health regions as behavioral health regions; (4) provide for the naming of regional behavioral health authorities and ongoing activities of regional governing boards; (5) reorganize and rename the State Mental Health Planning and Evaluation Council and the State Alcoholism and Drug Abuse Advisory Committee; (6) change and add provisions relating to development of community-based behavioral health services and funding for behavioral health services; and (7) authorize the closure of regional centers.

Source: Laws 2004, LB 1083, § 2; Laws 2006, LB 994, § 92; Laws 2013, LB6, § 12.

71-804 Terms, defined.

For purposes of the Nebraska Behavioral Health Services Act:

- (1) Behavioral health disorder means mental illness or alcoholism, drug abuse, or other addictive disorder;
- (2) Behavioral health region means a behavioral health region established in section 71-807;
- (3) Behavioral health services means services, including, but not limited to, consumer-provided services, support services, inpatient and outpatient services, and residential and nonresidential services, provided for the prevention, diagnosis, and treatment of behavioral health disorders and the rehabilitation and recovery of persons with such disorders;
- (4) Community-based behavioral health services or community-based services means behavioral health services that are not provided at a regional center;
- (5) Department means the Department of Health and Human Services;
- (6) Director means the Director of Behavioral Health;
- (7) Division means the Division of Behavioral Health of the department;
- (8) Medical assistance program means the program established pursuant to the Medical Assistance Act;
- (9) Public behavioral health system means the statewide array of behavioral health services for children and adults provided by the public sector or private sector and supported in whole or in part with funding received and adminis-

tered by the department, including behavioral health services provided under the medical assistance program;

(10) Regional center means one of the state hospitals for the mentally ill designated in section 83-305; and

(11) Regional center behavioral health services or regional center services means behavioral health services provided at a regional center.

Source: Laws 2004, LB 1083, § 4; Laws 2006, LB 1248, § 74; Laws 2007, LB296, § 454; Laws 2013, LB6, § 13.

Cross References

Medical Assistance Act, see section 68-901.

71-806 Division; powers and duties; rules and regulations.

(1) The division shall act as the chief behavioral health authority for the State of Nebraska and shall direct the administration and coordination of the public behavioral health system, including, but not limited to: (a) Administration and management of the division, regional centers, and any other facilities and programs operated by the division; (b) integration and coordination of the public behavioral health system; (c) comprehensive statewide planning for the provision of an appropriate array of community-based behavioral health services and continuum of care; (d) coordination and oversight of regional behavioral health authorities, including approval of regional budgets and audits of regional behavioral health authorities; (e) development and management of data and information systems; (f) prioritization and approval of all expenditures of funds received and administered by the division, including: The establishment of rates to be paid; reimbursement methodologies for behavioral health services; methodologies to be used by regional behavioral health authorities in determining a consumer's financial eligibility as provided in subsection (2) of section 71-809; and fees and copays to be paid by consumers of such services; (g) cooperation with the department in the licensure and regulation of behavioral health professionals, programs, and facilities; (h) cooperation with the department in the provision of behavioral health services under the medical assistance program; (i) audits of behavioral health programs and services; and (j) promotion of activities in research and education to improve the quality of behavioral health services, recruitment and retention of behavioral health professionals, and access to behavioral health programs and services.

(2) The department shall adopt and promulgate rules and regulations to carry out the Nebraska Behavioral Health Services Act.

Source: Laws 2004, LB 1083, § 6; Laws 2006, LB 1248, § 75; Laws 2007, LB296, § 456; Laws 2012, LB871, § 1.

71-809 Regional behavioral health authority; behavioral health services; powers and duties.

(1) Each regional behavioral health authority shall be responsible for the development and coordination of publicly funded behavioral health services within the behavioral health region pursuant to rules and regulations adopted and promulgated by the department, including, but not limited to, (a) administration and management of the regional behavioral health authority, (b) integration and coordination of the public behavioral health system within the behavioral health region, (c) comprehensive planning for the provision of an

appropriate array of community-based behavioral health services and continuum of care for the region, (d) submission for approval by the division of an annual budget and a proposed plan for the funding and administration of publicly funded behavioral health services within the region, (e) submission of annual reports and other reports as required by the division, (f) initiation and oversight of contracts for the provision of publicly funded behavioral health services, and (g) coordination with the division in conducting audits of publicly funded behavioral health programs and services.

(2) Each regional behavioral health authority shall adopt a policy for use in determining the financial eligibility of all consumers and shall adopt a uniform schedule of fees and copays, based on the policy and schedule developed by the division, to be assessed against consumers utilizing community-based behavioral health services in the region. The methods used to determine the financial eligibility of all consumers shall take into account taxable income, the number of family members dependent on the consumer's income, liabilities, and other factors as determined by the division. The policy and the schedule of fees and copays shall be approved by the regional governing board and included with the budget plan submitted to the division annually. Providers shall charge fees consistent with the schedule of fees and copays in accordance with the financial eligibility of all consumers but not in excess of the actual cost of the service. Each regional behavioral health authority shall assure that its policy and schedule of fees and copays are applied uniformly by the providers in the region.

(3) Except for services being provided by a regional behavioral health authority on July 1, 2004, under applicable state law in effect prior to such date, no regional behavioral health authority shall provide behavioral health services funded in whole or in part with revenue received and administered by the division under the Nebraska Behavioral Health Services Act unless:

- (a) There has been a public competitive bidding process for such services;
- (b) There are no qualified and willing providers to provide such services; and
- (c) The regional behavioral health authority receives written authorization from the director and enters into a contract with the division to provide such services.

(4) Each regional behavioral health authority shall comply with all applicable rules and regulations of the department relating to the provision of behavioral health services by such authority, including, but not limited to, rules and regulations which (a) establish definitions of conflicts of interest for regional behavioral health authorities and procedures in the event such conflicts arise, (b) establish uniform and equitable public bidding procedures for such services, and (c) require each regional behavioral health authority to establish and maintain a separate budget and separately account for all revenue and expenditures for the provision of such services.

Source: Laws 2004, LB 1083, § 9; Laws 2007, LB296, § 457; Laws 2012, LB871, § 2.

71-810 Division; community-based behavioral health services; duties; reduce or discontinue regional center behavioral health services; powers and duties.

(1) The division shall encourage and facilitate the statewide development and provision of an appropriate array of community-based behavioral health ser-

vices and continuum of care for the purposes of (a) providing greater access to such services and improved outcomes for consumers of such services and (b) reducing the necessity and demand for regional center behavioral health services.

(2) The division may reduce or discontinue regional center behavioral health services only if (a) appropriate community-based services or other regional center behavioral health services are available for every person receiving the regional center services that would be reduced or discontinued, (b) such services possess sufficient capacity and capability to effectively replace the service needs which otherwise would have been provided at such regional center, and (c) no further commitments, admissions, or readmissions for such services are required due to the availability of community-based services or other regional center services to replace such services.

(3) The division shall notify the Governor and the Legislature of any intended reduction or discontinuation of regional center services under this section. The notification submitted to the Legislature shall be submitted electronically. Such notice shall include detailed documentation of the community-based services or other regional center services that are being utilized to replace such services.

(4) As regional center services are reduced or discontinued under this section, the division shall make appropriate corresponding reductions in regional center personnel and other expenditures related to the provision of such services. All funding related to the provision of regional center services that are reduced or discontinued under this section shall be reallocated and expended by the division for purposes related to the statewide development and provision of community-based services.

(5) The division may establish state-operated community-based services to replace regional center services that are reduced or discontinued under this section. The division shall provide regional center employees with appropriate training and support to transition such employees into positions as may be necessary for the provision of such state-operated services.

(6) When the occupancy of the licensed psychiatric hospital beds of any regional center reaches twenty percent or less of its licensed psychiatric hospital bed capacity on March 15, 2004, the division shall notify the Governor and the Legislature of such fact. The notification submitted to the Legislature shall be submitted electronically. Upon such notification, the division, with the approval of a majority of members of the Executive Board of the Legislative Council, may provide for the transfer of all remaining patients at such center to appropriate community-based services or other regional center services pursuant to this section and cease the operation of such regional center.

(7) The division, in consultation with each regional behavioral health authority, shall establish and maintain a data and information system for all persons receiving state-funded behavioral health services under the Nebraska Behavioral Health Services Act. Information maintained by the division shall include, but not be limited to, (a) the number of persons receiving regional center services, (b) the number of persons ordered by a mental health board to receive inpatient or outpatient treatment and receiving regional center services, (c) the number of persons ordered by a mental health board to receive inpatient or outpatient treatment and receiving community-based services, (d) the number of persons voluntarily admitted to a regional center and receiving regional center services, (e) the number of persons waiting to receive regional center

services, (f) the number of persons waiting to be transferred from a regional center to community-based services or other regional center services, (g) the number of persons discharged from a regional center who are receiving community-based services or other regional center services, and (h) the number of persons admitted to behavioral health crisis centers. Each regional behavioral health authority shall provide such information as requested by the division and necessary to carry out this subsection. The division shall submit reports of such information to the Governor and the Legislature on a quarterly basis beginning July 1, 2005, in a format which does not identify any person by name, address, county of residence, social security number, or other personally identifying characteristic. The report submitted to the Legislature shall be submitted electronically.

(8) The provisions of this section are self-executing and require no further authorization or other enabling legislation.

Source: Laws 2004, LB 1083, § 10; Laws 2005, LB 551, § 3; Laws 2008, LB928, § 17; Laws 2009, LB154, § 18; Laws 2012, LB782, § 105.

71-816 Repealed. Laws 2013, LB 6, § 16.

71-817 Transferred to section 9-1006.

71-824 Post-adoption and post-guardianship case management services; notice; administration; evaluation.

No later than January 1, 2010, the department shall provide post-adoption and post-guardianship case management services for adoptive and guardianship families of former state wards on a voluntary basis. The department shall notify adoptive parents and guardians of the availability of such services and the process to access such services and that such services are provided on a voluntary basis. Notification shall be in writing and shall be provided at the time of finalization of the adoption agreement or completion of the guardianship and each six months thereafter until dissolution of the adoption, until termination of the guardianship, until the former state ward attains nineteen years of age, or until extended guardianship assistance payments are terminated pursuant to section 43-4511 or 43-4514, whichever is earlier. Post-adoption and post-guardianship case management services under this section shall be administered by the Division of Children and Family Services and shall be evaluated. The evaluation shall include, but not be limited to, the number and percentage of persons receiving such services and the degree of problem resolution reported by families receiving such services.

Source: Laws 2009, LB603, § 8; Laws 2014, LB908, § 9.
Effective date July 18, 2014.

71-825 Annual report; contents.

The department shall provide an annual report, no later than December 1, to the Governor and the Legislature on the operation of the Children and Family Support Hotline established under section 71-822, the Family Navigator Program established under section 71-823, and the provision of voluntary post-adoption and post-guardianship case management services under section 71-824, except that for 2012, 2013, and 2014, the department shall also provide the report to the Health and Human Services Committee of the Legislature on

or before September 15. The reports submitted to the Legislature and the committee shall be submitted electronically.

Source: Laws 2009, LB603, § 9; Laws 2012, LB782, § 107; Laws 2012, LB1160, § 15; Laws 2013, LB222, § 25.

71-827 Children's Behavioral Health Oversight Committee of the Legislature; created; members; duties; meetings; report.

(1) The Children's Behavioral Health Oversight Committee of the Legislature is created as a special legislative committee. The committee shall consist of nine members of the Legislature appointed by the Executive Board of the Legislative Council as follows: (a) Two members of the Appropriations Committee of the Legislature, (b) two members of the Health and Human Services Committee of the Legislature, (c) two members of the Judiciary Committee of the Legislature, and (d) three members of the Legislature who are not members of such committees. The Children's Behavioral Health Oversight Committee shall elect a chairperson and vice-chairperson from among its members. The executive board shall appoint members of the committee no later than thirty days after May 23, 2009, and within the first six legislative days of the regular legislative session in 2011. The committee and this section terminate on December 31, 2012.

(2) The committee shall monitor the effect of implementation of the Children and Family Behavioral Health Support Act and other child welfare and juvenile justice initiatives by the department related to the provision of behavioral health services to children and their families.

(3) The committee shall meet at least quarterly with representatives of the Division of Behavioral Health and the Division of Children and Family Services of the Department of Health and Human Services and with other interested parties and may meet at other times at the call of the chairperson.

(4) Staff support for the committee shall be provided by existing legislative staff as directed by the executive board. The committee may request the executive board to hire consultants that the committee deems necessary to carry out the purposes of the committee under this section.

(5) The committee shall provide a report to the Governor and the Legislature no later than December 1 of each year. The report submitted to the Legislature shall be submitted electronically. The report shall include, but not be limited to, findings and recommendations relating to the provision of behavioral health services to children and their families. The final report of the committee shall be provided to the Health and Human Services Committee of the Legislature on or before September 15, 2012.

Source: Laws 2009, LB603, § 11; Laws 2012, LB782, § 108; Laws 2012, LB1160, § 16.

Termination date December 31, 2012.

71-830 Behavioral Health Education Center; created; administration; duties; report.

(1) The Behavioral Health Education Center is created and shall be administered by the University of Nebraska Medical Center.

(2) The center shall:

(a)(i) Provide funds for two additional medical residents in a Nebraska-based psychiatry program each year starting in 2010 until a total of eight additional psychiatry residents are added in 2013. The center shall provide psychiatric residency training experiences that serve rural Nebraska and other underserved areas. As part of his or her residency training experiences, each center-funded resident shall participate in the rural training for a minimum of one year. A minimum of two of the eight center-funded residents shall be active in the rural training each year; and

(ii) Provide funds for five one-year doctoral-level psychology internships in Nebraska within twelve months after July 18, 2014, and every year thereafter and increase the number of interns in the program to ten within thirty-six months after July 18, 2014. The interns shall be placed in communities so as to increase access to behavioral health services for patients residing in rural and underserved areas of Nebraska;

(b) Focus on the training of behavioral health professionals in telehealth techniques, including taking advantage of a telehealth network that exists, and other innovative means of care delivery in order to increase access to behavioral health services for all Nebraskans;

(c) Analyze the geographic and demographic availability of Nebraska behavioral health professionals, including psychiatrists, social workers, community rehabilitation workers, psychologists, substance abuse counselors, licensed mental health practitioners, behavioral analysts, peer support providers, primary care physicians, nurses, nurse practitioners, pharmacists, and physician assistants;

(d) Prioritize the need for additional professionals by type and location;

(e) Establish learning collaborative partnerships with other higher education institutions in the state, hospitals, law enforcement, community-based agencies, and consumers and their families in order to develop evidence-based, recovery-focused, interdisciplinary curricula and training for behavioral health professionals delivering behavioral health services in community-based agencies, hospitals, and law enforcement. Development and dissemination of such curricula and training shall address the identified priority needs for behavioral health professionals; and

(f) Beginning in 2011, develop two interdisciplinary behavioral health training sites each year until a total of six sites have been developed. Four of the six sites shall be in counties with a population of fewer than fifty thousand inhabitants. Each site shall provide annual interdisciplinary training opportunities for a minimum of three behavioral health professionals.

(3) No later than December 1 of every odd-numbered year, the center shall prepare a report of its activities under the Behavioral Health Workforce Act. The report shall be filed electronically with the Clerk of the Legislature and shall be provided electronically to any member of the Legislature upon request.

Source: Laws 2009, LB603, § 14; Laws 2012, LB782, § 109; Laws 2014, LB901, § 1.

Effective date July 18, 2014.

71-831 Contracts and agreements; department; duties.

All contracts and agreements relating to the medical assistance program governing at-risk managed care service delivery for behavioral health services entered into by the department on or after July 1, 2012, shall:

(1) Provide a definition and cap on administrative spending that (a) shall not exceed seven percent unless the implementing department includes detailed requirements for tracking administrative spending to ensure (i) that administrative expenditures do not include additional profit and (ii) that any administrative spending is necessary to improve the health status of the population to be served and (b) shall not under any circumstances exceed ten percent;

(2) Provide a definition of annual contractor profits and losses and restrict such profits and losses under the contract so that (a) profit shall not exceed three percent per year and (b) losses shall not exceed three percent per year, as a percentage of the aggregate of all income and revenue earned by the contractor and related parties, including parent and subsidiary companies and risk-bearing partners, under the contract;

(3) Provide for reinvestment of (a) any profits in excess of the contracted amount, (b) performance contingencies imposed by the department, and (c) any unearned incentive funds, to fund additional behavioral health services for children, families, and adults according to a plan developed with input from stakeholders, including consumers and their family members, the office of consumer affairs within the division, and the regional behavioral health authority and approved by the department. Such plan shall address the behavioral health needs of adults and children, including filling service gaps and providing system improvements;

(4) Provide for a minimum medical loss ratio of eighty-five percent of the aggregate of all income and revenue earned by the contractor and related parties under the contract;

(5) Provide that contractor incentives, in addition to potential profit, be at least one and one-half percent of the aggregate of all income and revenue earned by the contractor and related parties under the contract;

(6) Provide that a minimum of one-quarter percent of the aggregate of all income and revenue earned by the contractor and related parties under the contract be at risk as a penalty if the contractor fails to meet the minimum performance metrics defined in the contract, and such penalties, if charged, shall be accounted for in a manner that shall not reduce or diminish service delivery in any way; and

(7) Be reviewed and awarded competitively and in full compliance with the procurement requirements of the State of Nebraska.

Source: Laws 2012, LB1158, § 2.

ARTICLE 9

NEBRASKA MENTAL HEALTH COMMITMENT ACT

Section

71-901. Act, how cited.

71-903. Definitions, where found.

71-904.01. Firearm-related disability, defined.

71-915. Mental health boards; created; powers; duties; compensation.

71-963. Firearm-related disabilities; petition to remove; mental health board; review hearing; evidence; decision; appeal; petition granted; effect.

71-901 Act, how cited.

Sections 71-901 to 71-963 shall be known and may be cited as the Nebraska Mental Health Commitment Act.

Source: Laws 1976, LB 806, § 89; Laws 1988, LB 257, § 6; Laws 1994, LB 498, § 12; Laws 1996, LB 1155, § 116; R.S.1943, (1999), § 83-1078; Laws 2004, LB 1083, § 21; Laws 2011, LB512, § 5.

71-903 Definitions, where found.

For purposes of the Nebraska Mental Health Commitment Act, unless the context otherwise requires, the definitions found in sections 71-904 to 71-914 shall apply.

Source: Laws 1976, LB 806, § 2; Laws 1994, LB 498, § 4; R.S.1943, (1999), § 83-1002; Laws 2004, LB 1083, § 23; Laws 2011, LB512, § 6.

71-904.01 Firearm-related disability, defined.

Firearm-related disability means a person is not permitted to (1) purchase, possess, ship, transport, or receive a firearm under either state or federal law, (2) obtain a certificate to purchase, lease, rent, or receive transfer of a handgun under section 69-2404, or (3) obtain a permit to carry a concealed handgun under the Concealed Handgun Permit Act.

Source: Laws 2011, LB512, § 7.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

71-915 Mental health boards; created; powers; duties; compensation.

(1) The presiding judge in each district court judicial district shall create at least one but not more than three mental health boards in such district and shall appoint sufficient members and alternate members to such boards. Members and alternate members of a mental health board shall be appointed for four-year terms. The presiding judge may remove members and alternate members of the board at his or her discretion. Vacancies shall be filled for the unexpired term in the same manner as provided for the original appointment. Members of the mental health board shall have the same immunity as judges of the district court.

(2) Each mental health board shall consist of an attorney licensed to practice law in this state and any two of the following but not more than one from each category: A physician, a psychologist, a psychiatric nurse, a licensed clinical social worker or a licensed independent clinical social worker, a licensed independent mental health practitioner who is not a social worker, or a layperson with a demonstrated interest in mental health and substance dependency issues. The attorney shall be chairperson of the board. Members and alternate members of a mental health board shall take and subscribe an oath to support the United States Constitution and the Constitution of Nebraska and to faithfully discharge the duties of the office according to law.

(3) The mental health board shall have the power to issue subpoenas, to administer oaths, and to do any act necessary and proper for the board to carry out its duties. No mental health board hearing shall be conducted unless three

members or alternate members are present and able to vote. Any action taken at any mental health board hearing shall be by majority vote.

(4) The mental health board shall prepare and file an annual inventory statement with the county board of its county of all county personal property in its custody or possession. Members of the mental health board shall be compensated and shall be reimbursed for their actual and necessary expenses by the county or counties being served by such board. Compensation shall be at an hourly rate to be determined by the presiding judge of the district court, except that such compensation shall not be less than fifty dollars for each hearing of the board. Members shall also be reimbursed for their actual and necessary expenses, not including charges for meals. Mileage shall be determined pursuant to section 23-1112.

Source: Laws 1976, LB 806, § 27; Laws 1981, LB 95, § 7; Laws 1990, LB 822, § 39; Laws 1994, LB 498, § 6; R.S.1943, (1999), § 83-1017; Laws 2004, LB 1083, § 35; Laws 2011, LB111, § 1.

71-963 Firearm-related disabilities; petition to remove; mental health board; review hearing; evidence; decision; appeal; petition granted; effect.

(1) Upon release from commitment or treatment, a person who, because of a mental health-related commitment or adjudication occurring under the laws of this state, is subject to the disability provisions of 18 U.S.C. 922(d)(4) and (g)(4) or is disqualified from obtaining a certificate to purchase, lease, rent, or receive transfer of a handgun under section 69-2404 or a permit to carry a concealed handgun under the Concealed Handgun Permit Act may petition the mental health board to remove such disabilities.

(2)(a) Upon the filing of the petition, the subject may request and, if the request is made, shall be entitled to, a review hearing by the mental health board. The mental health board shall grant a petition filed under subsection (1) of this section if the mental health board determines that:

(i) The subject will not be likely to act in a manner dangerous to public safety; and

(ii) The granting of the relief would not be contrary to the public interest.

(b) In determining whether to remove the subject's firearm-related disabilities, the mental health board shall receive and consider evidence upon the following:

(i) The circumstances surrounding the subject's mental health commitment or adjudication;

(ii) The subject's record, which shall include, at a minimum, the subject's mental health and criminal history records;

(iii) The subject's reputation, developed, at a minimum, through character witness statements, testimony, or other character evidence; and

(iv) Changes in the subject's condition, treatment, treatment history, or circumstances relevant to the relief sought.

(3) If a decision is made by the mental health board to remove the subject's firearm-related disabilities, the clerks of the various courts shall immediately send as soon as practicable but within thirty days an order to the Nebraska State Patrol and the Department of Health and Human Services, in a form and in a manner prescribed by the Department of Health and Human Services and

the Nebraska State Patrol, stating its findings, which shall include a statement that, in the opinion of the mental health board, (a) the subject is not likely to act in a manner that is dangerous to public safety and (b) removing the subject's firearm-related disabilities will not be contrary to the public interest.

(4) The subject may appeal a denial of the requested relief to the district court, and review on appeal shall be de novo.

(5) If a petition is granted under this section, the commitment or adjudication for which relief is granted shall be deemed not to have occurred for purposes of section 69-2404 and the Concealed Handgun Permit Act and, pursuant to section 105(b) of Public Law 110-180, for purposes of 18 U.S.C. 922(d)(4) and (g)(4).

Source: Laws 2011, LB512, § 8.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

ARTICLE 11

DEVELOPMENTAL DISABILITIES COURT-ORDERED CUSTODY ACT

Section

71-1101.	Act, how cited.
71-1104.	Definitions, where found.
71-1107.	Developmental disability, defined.
71-1108.01.	Intellectual disability, defined.
71-1110.	Transferred to section 71-1108.01.
71-1134.	Reports.

71-1101 Act, how cited.

Sections 71-1101 to 71-1134 shall be known and may be cited as the Developmental Disabilities Court-Ordered Custody Act.

Source: Laws 2005, LB 206, § 1; Laws 2013, LB23, § 29.

71-1104 Definitions, where found.

For purposes of the Developmental Disabilities Court-Ordered Custody Act, the definitions in sections 71-1105 to 71-1116 apply.

Source: Laws 2005, LB 206, § 4; Laws 2013, LB23, § 30.

71-1107 Developmental disability, defined.

Developmental disability means an intellectual disability or a severe chronic cognitive impairment, other than mental illness, that is manifested before the age of twenty-two years and is likely to continue indefinitely.

Source: Laws 2005, LB 206, § 7; Laws 2013, LB23, § 31.

71-1108.01 Intellectual disability, defined.

Intellectual disability means a state of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which originates in the developmental period.

Source: Laws 2005, LB 206, § 10; R.S.1943, (2009), § 71-1110; Laws 2013, LB23, § 32.

71-1110 Transferred to section 71-1108.01.**71-1134 Reports.**

(1) The department in collaboration with the Advisory Committee on Developmental Disabilities established under section 83-1212.01 shall submit quarterly reports to the court, all parties of record, and the guardian of any subject in court-ordered custody.

(2) The department shall submit electronically an annual report to the Legislature regarding the implementation of the Developmental Disabilities Court-Ordered Custody Act. Such reports shall not contain any name, address, or other identifying factors or other confidential information regarding any subject.

Source: Laws 2005, LB 206, § 34; Laws 2012, LB782, § 110.

ARTICLE 13**FUNERAL DIRECTORS, EMBALMING, AND CREMATION****(b) CREMATION OF HUMAN REMAINS ACT**

Section

71-1356. Terms, defined.

71-1373. Cremation; right to authorize.

(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 30-2223;

(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; Laws 2014, LB998, § 15.
Effective date April 10, 2014.

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 30-2223.

Source: Laws 2003, LB 95, § 19; Laws 2007, LB463, § 1190; Laws 2014, LB998, § 16.
Effective date April 10, 2014.

ARTICLE 15

HOUSING

(c) MODULAR HOUSING UNITS

Section

71-1559. Modular housing unit; compliance assurance program; exception; purpose; inspection; seal; when issued; fee; Public Service Commission Housing and Recreational Vehicle Cash Fund.

71-1567. Seal; denied or suspended; hearing; appeal.

(c) MODULAR HOUSING UNITS

71-1559 Modular housing unit; compliance assurance program; exception; purpose; inspection; seal; when issued; fee; Public Service Commission Housing and Recreational Vehicle Cash Fund.

(1) Every modular housing unit, except those constructed or manufactured by any school district or community college area as a part of a buildings trade or other instructional program offered by such district or area, manufactured, sold, offered for sale, or leased in this state more than six months after July 10, 1976, and before May 1, 1998, shall comply with the seal requirements of the state agency responsible for regulation of modular housing units as such requirements existed on the date of manufacture.

(2) Every modular housing unit, except those constructed or manufactured by any school district or community college area as part of a buildings trade or other instructional program offered by such district or area, manufactured, sold, offered for sale, or leased in this state on or after May 1, 1998, shall bear a seal issued by the commission certifying that the construction and the structural, plumbing, heating, and electrical systems of such modular housing unit have been installed in compliance with its standards applicable at the time of manufacture. Each manufacturer of such modular housing units, except those constructed or manufactured by such school district or community college area, shall submit its plans to the commission for the purposes of inspection. The commission shall establish a compliance assurance program consisting of an application form and a compliance assurance manual. Such manual shall identify and list all procedures which the manufacturer and the inspection agency propose to implement to assure that the finished modular housing unit conforms to the approved building system and the applicable codes adopted by the commission. The compliance assurance program requirements shall apply to all inspection agencies, whether commission or authorized third party, and shall define duties and responsibilities in the process of inspecting, monitoring, and issuing seals for modular housing units. The commission shall issue the seal only after ascertaining that the manufacturer is in full compliance with the compliance assurance program through inspections at the plant by the commission or authorized third-party inspection agency. Such inspections shall be of an unannounced frequency such that the required level of code compliance performance is implemented and maintained throughout all areas of plant and site operations that affect regulatory aspects of the construction. Each seal issued by the state shall remain the property of the commission and may be revoked by the commission in the event of violation of the conditions of issuance.

(3) Modular housing units constructed or manufactured by any school district or community college area as a part of a buildings trade or other instructional program offered by such district or area shall be inspected by the local inspection authority or, upon request of the district or area, by the commission. If the commission inspects a unit and finds that it is in compliance, the commission shall issue a seal certifying that the construction and the structural, plumbing, heating, and electrical systems of such unit have been installed in compliance with the standards applicable at the time of manufacture.

(4) The commission shall charge a seal fee of not less than one hundred and not more than one thousand dollars per modular housing unit, as determined annually by the commission after published notice and a hearing, for seals issued by the commission under subsection (2) or (3) of this section.

(5) Inspection fees shall be paid for all inspections by the commission of manufacturing plants located outside of the State of Nebraska. Such fees shall consist of a reimbursement by the manufacturer of actual travel and inspection expenses only and shall be paid prior to any issuance of seals.

(6) All fees collected under the Nebraska Uniform Standards for Modular Housing Units Act shall be remitted to the State Treasurer for credit to the Public Service Commission Housing and Recreational Vehicle Cash Fund.

Source: Laws 1976, LB 248, § 5; Laws 1978, LB 812, § 1; Laws 1981, LB 218, § 1; Laws 1983, LB 617, § 20; Laws 1984, LB 822, § 5; Laws 1991, LB 703, § 34; Laws 1992, LB 1019, § 66; Laws 1996, LB 1044, § 565; Laws 1998, LB 1073, § 93; Laws 2001, LB 247, § 1; Laws 2003, LB 241, § 1; Laws 2008, LB797, § 8; Laws 2010, LB849, § 24.

71-1567 Seal; denied or suspended; hearing; appeal.

(1) The commission shall refuse to issue a seal to a manufacturer for any modular housing unit not found to be in compliance with its standards governing the construction of or the structural, plumbing, heating, or electrical systems for modular housing units or for which fees have not been paid. Except in case of failure to pay the required fees, any such manufacturer may request a hearing before the commission on the issue of such refusal. Procedures for notice and opportunity for a hearing before the commission shall be pursuant to the Administrative Procedure Act. The refusal may be appealed, and the appeal shall be in accordance with section 75-136.

(2) The issuance of seals may be suspended as to any manufacturer who is convicted of violating section 71-1563 or as to any manufacturer who violates any other provision of the Nebraska Uniform Standards for Modular Housing Units Act or any rule, regulation, commission order, or standard adopted pursuant thereto, and issuance of the seals shall not be resumed until such manufacturer submits sufficient proof that the conditions which caused the violation have been remedied. Any such manufacturer may request a hearing before the commission on the issue of such suspension. Procedures for notice and opportunity for a hearing before the commission shall be pursuant to the Administrative Procedure Act. The suspension may be appealed, and the appeal shall be in accordance with section 75-136.

Source: Laws 1976, LB 248, § 13; Laws 1984, LB 822, § 13; Laws 1988, LB 352, § 121; Laws 1998, LB 1073, § 101; Laws 2008, LB797, § 11; Laws 2013, LB545, § 2.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 16

LOCAL HEALTH SERVICES

(b) LOCAL PUBLIC HEALTH DEPARTMENTS

Section

71-1628.05. Report.

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

71-1631.02. Local boards of health; retirement plan; reports.

(b) LOCAL PUBLIC HEALTH DEPARTMENTS

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 electronically 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; Laws 2012, LB782, § 111.

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 electronically 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; Laws 2012, LB782, § 112.

71-1631.02 Local boards of health; retirement plan; reports.

(1) Beginning December 31, 1998, and each year thereafter, the health director of a board of health with an independent retirement plan established pursuant to section 71-1631 and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board an annual report on such plan and shall submit copies of such report to the Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

- (a) The number of persons participating in the retirement plan;
- (b) The contribution rates of participants in the plan;
- (c) Plan assets and liabilities;
- (d) The names and positions of persons administering the plan;
- (e) The names and positions of persons investing plan assets;
- (f) The form and nature of investments;
- (g) For each independent defined contribution plan, a full description of investment policies and options available to plan participants; and
- (h) For each independent defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If an independent plan contains no current active participants, the health director may file in place of such report a statement with the Public Employees

Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(2) If such retirement plan is a defined benefit plan which was open to new members on January 1, 2004, in addition to the reports required by section 13-2402, a board of health with an independent retirement plan established pursuant to section 71-1631 shall cause to be prepared an annual report and the health director shall file the same with the Public Employees Retirement Board and the Nebraska Retirement Systems Committee of the Legislature and submit to the Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. If the board of health does not submit a copy of the report to the Auditor of Public Accounts within six months after the end of the plan year, the Auditor of Public Accounts may audit, or cause to be audited, the local public health department. All costs of the audit shall be paid by the local public health department. The report shall consist of a full actuarial analysis of each such independent retirement plan established pursuant to section 71-1631. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan. The report to the Nebraska Retirement Systems Committee shall be submitted electronically.

Source: Laws 1998, LB 1191, § 43; Laws 1999, LB 795, § 12; Laws 2011, LB474, § 12; Laws 2014, LB759, § 19.
Effective date July 18, 2014.

ARTICLE 17

NURSES

(h) NEBRASKA CENTER FOR NURSING ACT

Section

71-1796. Act, how cited.

71-17,100. Repealed. Laws 2010, LB 849, § 41.

(j) NURSING FACULTY STUDENT LOAN ACT

71-17,115. Report required.

(h) NEBRASKA CENTER FOR NURSING ACT

71-1796 Act, how cited.

Sections 71-1796 to 71-1799 shall be known and may be cited as the Nebraska Center for Nursing Act.

Source: Laws 2000, LB 1025, § 1; Laws 2005, LB 243, § 2; Laws 2010, LB849, § 25.

71-17,100 Repealed. Laws 2010, LB 849, § 41.

(j) NURSING FACULTY STUDENT LOAN ACT

71-17,115 Report required.

The department shall annually provide a report to the Governor and the Clerk of the Legislature on the status of the program, the status of the loan

recipients, and the impact of the program on the number of nursing faculty in Nebraska. The report submitted to the Clerk of the Legislature shall be submitted electronically. Any report which includes information about loan recipients shall exclude confidential information or any other information which specifically identifies a loan recipient.

Source: Laws 2005, LB 146, § 8; Laws 2012, LB782, § 113.

ARTICLE 19

CARE OF CHILDREN

(a) FOSTER CARE LICENSURE

Section

- 71-1901. Terms, defined.
 71-1902. Foster care; license required; license renewal; kinship homes and relative homes; department and child-placing agencies; duties; placement in nonlicensed relative home or kinship home; approval by department; when; license revocation; procedure.
 71-1903. Foster care; investigation by department; State Fire Marshal; fee; criminal history record information check.
 71-1904. Rules and regulations; waiver of licensing standard; when; department; report.
 71-1907. Child passenger restraint; requirements; violation; penalty.

(b) CHILD CARE LICENSURE

- 71-1908. Act, how cited; legislative findings.
 71-1911. Licenses; when required; issuance; corrective action status; display of license.
 71-1911.03. Applicant; liability insurance.
 71-1912. Department; investigation; inspections.
 71-1919. License denial; disciplinary action; grounds.

(c) CHILDREN'S RESIDENTIAL FACILITIES AND PLACING LICENSURE ACT

- 71-1924. Act, how cited.
 71-1925. Purpose of act.
 71-1926. Terms, defined.
 71-1927. Residential child-caring agency or child-placing agency; license required; current license holders; how treated.
 71-1928. Applicant for license or renewal; application; requirements; contents.
 71-1929. Fees.
 71-1930. Licenses; expiration date; not transferable or assignable; public inspection and display.
 71-1931. Separate license required; duties of licensee.
 71-1932. Provisional license; period valid; conversion to regular license.
 71-1933. Inspection by department; inspection report.
 71-1934. State Fire Marshal; inspection; fee; delegation of authority; department; investigations authorized; delegation of authority.
 71-1935. Inspection report; findings of noncompliance; department; proceedings; letter requesting statement of compliance; contents; failure to correct; additional proceedings.
 71-1936. Alleged violation of act; complaint; investigation; department; duties; confidentiality; immunity.
 71-1937. Licensee; discrimination or retaliation prohibited; cause of action for relief.
 71-1938. Emergency; department; powers; order; contents; hearing; order; petition for injunction; other enforcement measures.
 71-1939. Department; deny or refuse renewal of license; grounds.
 71-1940. Deny, refuse renewal, or take disciplinary action against license; grounds.
 71-1941. License; department; impose disciplinary actions; fine; how treated; recovery.
 71-1942. Disciplinary action; department; considerations.

Section

- 71-1943. Deny, refuse renewal of, or take disciplinary action against license; department; notice; contents; hearing.
- 71-1944. Applicant or licensee; notification to department; failure to notify department; effect.
- 71-1945. Applicant or licensee; hearing; procedure; director; decision; contents.
- 71-1946. Decision of department; appeal; procedure.
- 71-1947. Lapsed license; reinstatement; suspension; probation; reinstatement; procedure; hearing; revoked license; revocation period.
- 71-1948. Voluntary surrender of license.
- 71-1949. Rules and regulations; contested cases; procedure.
- 71-1950. Violations; penalty.
- 71-1951. Existing rules and regulations, licenses, and proceedings; how treated.

(d) STEP UP TO QUALITY CHILD CARE ACT

- 71-1952. Act, how cited.
- 71-1953. Purposes of act.
- 71-1954. Terms, defined.
- 71-1955. Quality rating and improvement system; State Department of Education; Department of Health and Human Services; duties.
- 71-1956. Child care and early childhood education program; rating; quality rating criteria.
- 71-1957. Participation in quality rating and improvement system.
- 71-1958. Quality scale rating; application; assignment of rating.
- 71-1959. Quality scale rating review; reevaluation.
- 71-1960. License under Child Care Licensing Act; denial of license or disciplinary act authorized.
- 71-1961. Quality rating and improvement system incentives and support.
- 71-1962. Nebraska Early Childhood Professional Record System; creation and operation; State Department of Education; duties.
- 71-1963. Quality scale ratings available on web site; when.
- 71-1964. Rules and regulations.

(a) FOSTER CARE LICENSURE

71-1901 Terms, defined.

For purposes of sections 71-1901 to 71-1906.01:

(1) Person includes a partnership, limited liability company, firm, agency, association, or corporation;

(2) Child means an unemancipated minor;

(3) Child-placing agency has the definition found in section 71-1926;

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

(5) Foster care means engaged in the service of exercising twenty-four-hour daily care, supervision, custody, or control over children, for compensation or hire, in lieu of the care or supervision normally exercised by parents in their own home. Foster care does not include casual care at irregular intervals or programs as defined in section 71-1910;

(6) Foster family home means a home which provides foster care to a child or children pursuant to a foster care placement as defined in section 43-1301. Foster family homes include licensed homes where the primary caretaker has no significant prior relationship with the child or children in his or her care and both licensed and unlicensed relative and kinship homes;

(7) Kinship home means a home where a child or children receive foster care and at least one of the primary caretakers has previously lived with or is a

trusted adult that has a preexisting, significant relationship with the child or children or a sibling of such child or children pursuant to section 43-1311.02;

(8) Native American means a person who is a member of an Indian tribe or eligible for membership in an Indian tribe;

(9) Relative home means a home where a child or children receive foster care and at least one of the primary caretakers is related to the child or children, or to a sibling of such child or children pursuant to section 43-1311.02, in his or her care by blood, marriage, or adoption or, in the case of an Indian child, at least one of the primary caretakers is an extended family member as defined in section 43-1503; and

(10) Residential child-caring agency has the definition found in section 71-1926.

Source: Laws 1943, c. 154, § 1, p. 563; R.S.1943, § 71-1901; Laws 1945, c. 171, § 1, p. 548; Laws 1961, c. 415, § 25, p. 1258; Laws 1984, LB 130, § 13; Laws 1987, LB 386, § 1; Laws 1993, LB 121, § 425; Laws 1995, LB 401, § 24; Laws 1995, LB 451, § 1; Laws 1996, LB 1044, § 583; Laws 1997, LB 307, § 171; Laws 2001, LB 209, § 19; Laws 2002, LB 93, § 7; Laws 2008, LB797, § 12; Laws 2013, LB265, § 40.

71-1902 Foster care; license required; license renewal; kinship homes and relative homes; department and child-placing agencies; duties; placement in nonlicensed relative home or kinship home; approval by department; when; license revocation; procedure.

(1) The department shall adopt and promulgate rules and regulations on requirements for licenses, waivers, variances, and approval of foster family homes taking into consideration the health, safety, well-being, and best interests of the child. An initial assessment of a foster family home shall be completed and shall focus on the safety, protection, and immediate health, educational, developmental, and emotional needs of the child and the willingness and ability of the foster home, relative home, or kinship home to provide a safe, stable, and nurturing environment for a child for whom the department or child-placing agency has assumed responsibility.

(2)(a) Except as otherwise provided in this section, no person shall furnish or offer to furnish foster care for one or more children without having in full force and effect a written license issued by the department upon such terms and conditions as may be prescribed by general rules and regulations adopted and promulgated by the department. The terms and conditions for licensure may allow foster family homes to meet licensing standards through variances equivalent to the established standards.

(b) The department may issue a time-limited, nonrenewable provisional license to an applicant who is unable to comply with all licensure requirements and standards, is making a good faith effort to comply, and is capable of compliance within the time period stated in the license. The department may issue a time-limited, nonrenewable probationary license to a licensee who agrees to establish compliance with rules and regulations that, when violated, do not present an unreasonable risk to the health, safety, or well-being of the foster children in the care of the applicant.

(3) Kinship homes and relative homes are exempt from licensure, however, such homes should make efforts to be licensed if such license will facilitate the permanency plan of the child. The department and child-placing agencies shall, when requested or as part of the child's permanency plan, provide resources for and assistance with licensure, including, but not limited to, information on licensure, waivers for relative homes, kinship-specific and relative-specific foster care training, referral to local service providers and support groups, and funding and resources available to address home safety or other barriers to licensure.

(4) Prior to placement in a nonlicensed relative home or kinship home, approval shall be obtained from the department. Requirements for initial approval shall include, but not be limited to, the initial assessment provided for in subsection (1) of this section, a home visit to assure adequate and safe housing, and a criminal background check of all adult residents. Final approval shall include, but not be limited to, requirements as appropriate under section 71-1903. The department or child-placing agency shall provide assistance to an approved relative home or kinship home to support the care, protection, and nurturing of the child. Support may include, but not be limited to, information on licensure, waivers, and variances, kinship-specific and relative-specific foster care training, mental and physical health care, options for funding for needs of the child, and service providers and support groups to address the needs of relative and kinship parents, families, and children.

(5) All nonprovisional and nonprobationary licenses issued under sections 71-1901 to 71-1906.01 shall expire two years from the date of issuance and shall be subject to renewal under the same terms and conditions as the original license, except that if a licensee submits a completed renewal application thirty days or more before the license's expiration date, the license shall remain in effect until the department either renews the license or denies the renewal application. No license issued pursuant to this section shall be renewed unless the licensee has completed the required hours of training in foster care in the preceding twelve months as prescribed by the department. A license may be revoked for cause, after notice and hearing, in accordance with rules and regulations adopted and promulgated by the department.

(6) A young adult continuing to reside in a foster family home as provided in subdivision (2) of section 43-4505 does not constitute an unrelated adult for the purpose of determining eligibility of the family to be licensed as a foster family home.

Source: Laws 1943, c. 154, § 2, p. 564; R.S.1943, § 71-1902; Laws 1945, c. 171, § 2, p. 549; Laws 1949, c. 207, § 1, p. 595; Laws 1961, c. 415, § 26, p. 1258; Laws 1982, LB 928, § 52; Laws 1984, LB 130, § 14; Laws 1987, LB 386, § 2; Laws 1988, LB 930, § 1; Laws 1990, LB 1222, § 12; Laws 1995, LB 401, § 25; Laws 1995, LB 402, § 1; Laws 1995, LB 451, § 2; Laws 2001, LB 209, § 20; Laws 2002, LB 93, § 8; Laws 2011, LB648, § 3; Laws 2012, LB820, § 7; Laws 2013, LB216, § 18; Laws 2013, LB265, § 41.

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 homes where foster care is provided. 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 licensed foster care providers subject to this section or applicants for licenses to provide such care to determine if standards of health and sanitation set by the department for the care and protection of the child or children who may be placed in foster family homes are being met. 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; Laws 2013, LB265, § 42.

71-1904 Rules and regulations; waiver of licensing standard; when; department; report.

(1) The department shall adopt and promulgate rules and regulations pursuant to sections 71-1901 to 71-1906.01 for (a) the proper care and protection of children by licensees under such sections, (b) the issuance, suspension, and revocation of licenses to provide foster care, (c) the issuance, suspension, and revocation of probationary licenses to provide foster care, (d) the issuance, suspension, and revocation of provisional licenses to provide foster care, (e) the provision of training in foster care, which training shall be directly related to the skills necessary to care for children in need of out-of-home care, including, but not limited to, abused, neglected, dependent, and delinquent children, and (f) the proper administration of sections 71-1901 to 71-1906.01.

(2) The department may issue a waiver for any licensing standard not related to children's safety for a relative home that is pursuing licensure. Such waivers shall be granted on a case-by-case basis upon assessment by the department based upon the best interests of the child. A relative home that receives a waiver pursuant to this subsection shall be considered fully licensed for purposes of federal reimbursement under the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110-351. The department shall submit electronically an annual report to the Health and Human Services Committee of the Legislature on the number of waivers granted under this subsection and the total number of children placed in relative homes. For 2013 and 2014, the department shall provide the report electronically to the Health and Human Services Committee of the Legislature on or before September 15.

(3) The department shall adopt and promulgate rules and regulations establishing new foster home licensing requirements that ensure children's safety, health, and well-being but minimize the use of licensing mandates for nonsafety issues. Such rules and regulations shall provide alternatives to address nonsafety issues regarding housing and provide assistance to families in overcoming licensing barriers, especially in child-specific relative and kinship placements, to maximize appropriate reimbursement under Title IV-E of the federal Social Security Act, as amended, including expanding the use of kinship guardianship assistance payments under 42 U.S.C. 673(d), as such act and section existed on January 1, 2013.

Source: Laws 1943, c. 154, § 4, p. 564; R.S.1943, § 71-1904; Laws 1945, c. 171, § 4, p. 550; Laws 1961, c. 415, § 28, p. 1259; Laws 1990, LB 1222, § 13; Laws 1995, LB 401, § 27; Laws 1995, LB 402, § 2; Laws 1995, LB 451, § 4; Laws 2001, LB 209, § 22; Laws 2002, LB 93, § 10; Laws 2003, LB 54, § 1; Laws 2012, LB782, § 114; Laws 2012, LB1160, § 17; Laws 2013, LB222, § 26; Laws 2013, LB265, § 43; Laws 2013, LB269, § 9.

71-1907 Child passenger restraint; requirements; violation; penalty.

Any person furnishing foster care who is subject to licensure under section 71-1902 or the Children's Residential Facilities and Placing Licensure Act, when transporting in a motor vehicle any children for whom care is being furnished, shall use an approved child passenger restraint system for each child, except that an occupant protection system as defined in section 60-6,265 may be used for any child six years of age or older.

Any person violating this section shall be guilty of an infraction as defined in section 29-431 and shall have his or her license to furnish foster care revoked or suspended by the Department of Health and Human Services.

For purposes of this section, approved child passenger restraint system shall mean a restraint system which meets Federal Motor Vehicle Safety Standard 213 as developed by the National Highway Traffic Safety Administration, as such standard existed on July 20, 2002.

Source: Laws 1982, LB 69, § 1; Laws 1987, LB 386, § 4; Laws 1992, LB 958, § 10; Laws 1993, LB 370, § 475; Laws 1995, LB 401, § 28; Laws 1996, LB 1044, § 586; Laws 1997, LB 307, § 174; Laws 2000, LB 410, § 3; Laws 2002, LB 1073, § 3; Laws 2013, LB265, § 44.

Cross References

Children's Residential Facilities and Placing Licensure Act, see section 71-1924.

(b) CHILD CARE LICENSURE

71-1908 Act, how cited; legislative findings.

(1) Sections 71-1908 to 71-1923 shall be known and may be cited as the Child Care Licensing Act.

(2) The Legislature finds that there is a present and growing need for quality child care programs and facilities. There is a need to establish and maintain licensure of persons providing such programs to ensure that such persons are competent and are using safe and adequate facilities. The Legislature further finds and declares that the development and supervision of programs are a matter of statewide concern and should be dealt with uniformly on the state and local levels. There is a need for cooperation among the various state and local agencies which impose standards on licensees, and there should be one agency which coordinates the enforcement of such standards and informs the Legislature about cooperation among the various agencies.

Source: Laws 1984, LB 130, § 1; Laws 1995, LB 401, § 29; Laws 2004, LB 1005, § 67; Laws 2013, LB105, § 1.

71-1911 Licenses; when required; issuance; corrective action status; display of license.

(1) A person may operate child care for three or fewer children without having a license issued by the department. A person who is not required to be licensed may choose to apply for a license and, upon obtaining a license, shall be subject to the Child Care Licensing Act. A person who has had a license issued pursuant to this section and has had such license suspended or revoked other than for nonpayment of fees shall not operate or offer to operate a program for or provide care to any number of children until the person is licensed pursuant to this section.

(2) No person shall operate or offer to operate a program for four or more children under his or her direct supervision, care, and control at any one time from families other than that of such person without having in full force and effect a written license issued by the department upon such terms as may be prescribed by the rules and regulations adopted and promulgated by the department. The license may be a provisional license or an operating license. A

city, village, or county which has rules, regulations, or ordinances in effect on July 10, 1984, which apply to programs operating for two or three children from different families may continue to license persons providing such programs. If the license of a person is suspended or revoked other than for nonpayment of fees, such person shall not be licensed by any city, village, or county rules, regulations, or ordinances until the person is licensed pursuant to this section.

(3) A provisional license shall be issued to all applicants following the completion of preservice orientation training approved or delivered by the department for the first year of operation. At the end of one year of operation, the department shall either issue an operating license, extend the provisional license, or deny the operating license. The provisional license may be extended once for a period of no more than six months. The decision regarding extension of the provisional license is not appealable. The provisional license may be extended if:

(a) A licensee is unable to comply with all licensure requirements and standards, is making a good faith effort to comply, and is capable of compliance within the next six months;

(b) The effect of the current inability to comply with a rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and

(c) The licensee has a written plan of correction that has been approved by the department which is to be completed within the renewal period.

(4) The department may place a provisional or operating license on corrective action status. Corrective action status is voluntary and may be in effect for up to six months. The decision regarding placement on corrective action status is not a disciplinary action and is not appealable. If the written plan of correction is not approved by the department, the department may discipline the license. A probationary license may be issued for the licensee to operate under corrective action status if the department determines that:

(a) The licensee is unable to comply with all licensure requirements and standards or has had a history of noncompliance;

(b) The effect of noncompliance with any rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and

(c) The licensee has a written plan of correction that has been approved by the department.

(5) Operating licenses issued under the Child Care Licensing Act shall remain in full force and effect subject to annual inspections and fees. The department may amend a license upon change of ownership or location. Amending a license requires a site inspection by the department at the time of amendment. When a program is to be permanently closed, the licensee shall return the license to the department within one week after the closing.

(6) The license, including any applicable status or amendment, shall be displayed by the licensee in a prominent place so that it is clearly visible to parents and others. License record information and inspection reports shall be made available by the licensee for public inspection upon request.

Source: Laws 1984, LB 130, § 4; Laws 1988, LB 1013, § 1; Laws 1991, LB 836, § 30; Laws 1993, LB 510, § 1; Laws 1995, LB 401, § 32; Laws 1997, LB 310, § 6; Laws 1997, LB 752, § 177; Laws 1998,

LB 1354, § 33; Laws 1999, LB 594, § 52; Laws 2004, LB 1005, § 70; Laws 2006, LB 994, § 98; Laws 2014, LB1050, § 2.
Effective date July 18, 2014.

71-1911.03 Applicant; liability insurance.

An applicant for a license under the Child Care Licensing Act shall provide to the department written proof of liability insurance coverage of at least one hundred thousand dollars per occurrence prior to issuance of the license. A licensee subject to the Child Care Licensing Act on July 1, 2014, shall obtain such liability insurance coverage and provide written proof to the department within thirty days after July 1, 2014. Failure by a licensee to maintain the required level of liability insurance coverage shall be deemed noncompliance with the Child Care Licensing Act. If the licensee is the State of Nebraska or a political subdivision, the licensee may utilize a risk retention group or a risk management pool for purposes of providing such liability insurance coverage or may self-insure all or part of such coverage.

Source: Laws 2013, LB105, § 2.

71-1912 Department; investigation; inspections.

(1) Before issuance of a license, the department shall investigate or cause an investigation to be made, when it deems necessary, to determine if the applicant or person in charge of the program meets or is capable of meeting the physical well-being, safety, and protection standards and the other rules and regulations of the department adopted and promulgated under the Child Care Licensing Act. The department may investigate the character of applicants and licensees, any member of the applicant's or licensee's household, and the staff and employees of programs by making a national criminal history record information check. The department may at any time inspect or cause an inspection to be made of any place where a program is operating to determine if such program is being properly conducted.

(2) All inspections by the department shall be unannounced except for initial licensure visits and consultation visits. Initial licensure visits are announced visits necessary for a provisional license to be issued to a family child care home I, family child care home II, child care center, or school-age-only or preschool program. Consultation visits are announced visits made at the request of a licensee for the purpose of consulting with a department specialist on ways of improving the program.

(3) An unannounced inspection of any place where a program is operating shall be conducted by the department or the city, village, or county pursuant to subsection (2) of section 71-1914 at least annually for a program licensed to provide child care for fewer than thirty children and at least twice every year for a program licensed to provide child care for thirty or more children.

(4) Whenever an inspection is made, the findings shall be recorded in a report designated by the department. The public shall have access to the results of these inspections upon a written or oral request to the department. The request must include the name and address of the program. Additional unannounced inspections shall be performed as often as is necessary for the efficient and effective enforcement of the Child Care Licensing Act.

Source: Laws 1984, LB 130, § 5; Laws 1985, LB 447, § 38; Laws 1987, LB 386, § 5; Laws 1988, LB 1013, § 2; Laws 1995, LB 401, § 33;

Laws 1997, LB 310, § 7; Laws 2004, LB 1005, § 73; Laws 2014, LB1050, § 3.

Effective date July 18, 2014.

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;

(11) Failure to pay fees required under the Child Care Licensing Act; or

(12) Failure to comply with the Step Up to Quality Child Care Act.

Source: Laws 2004, LB 1005, § 82; Laws 2007, LB296, § 505; Laws 2013, LB507, § 16.

Cross References

Medication Aide Act, see section 71-6718.

Step Up to Quality Child Care Act, see section 71-1952.

(c) CHILDREN'S RESIDENTIAL FACILITIES
AND PLACING LICENSURE ACT

71-1924 Act, how cited.

Sections 71-1924 to 71-1951 shall be known and may be cited as the Children's Residential Facilities and Placing Licensure Act.

Source: Laws 2013, LB265, § 1.

71-1925 Purpose of act.

The purpose of the Children's Residential Facilities and Placing Licensure Act is to protect the public health and the health, safety, and welfare of children who reside in or who are placed in settings other than the home of their parent or legal guardian by providing for the licensing of residential child-caring agencies and child-placing agencies in the State of Nebraska. The act provides for the development, establishment, and enforcement of basic standards for residential child-caring agencies and child-placing agencies.

Source: Laws 2013, LB265, § 2.

71-1926 Terms, defined.

For purposes of the Children's Residential Facilities and Placing Licensure Act:

(1) Care means the provision of room and board and the exercise of concern and responsibility for the safety and welfare of children on a twenty-four-hour-per-day basis in settings that serve as the out-of-home placement for children;

(2) Child means a minor less than nineteen years of age;

(3) Child-placing agency means any person other than the parent or legal guardian of a child that receives the child for placement and places or arranges for the placement of a child in a foster family home, adoptive home, residential child-caring agency, or independent living;

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

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

(6) Person includes bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations; and

(7) Residential child-caring agency means a person that provides care for four or more children and that is not a foster family home as defined in section 71-1901.

Source: Laws 2013, LB265, § 3.

71-1927 Residential child-caring agency or child-placing agency; license required; current license holders; how treated.

(1) Except as provided in subsection (2) of this section, a residential child-caring agency or child-placing agency shall not be established, operated, or

maintained in this state without first obtaining a license issued by the department under the Children's Residential Facilities and Placing Licensure Act. No person shall hold itself out as a residential child-caring agency or child-placing agency or as providing such services unless licensed under the act. The department shall issue a license to a residential child-caring agency or a child-placing agency that satisfies the requirements for licensing under the act.

(2) A group home, child-caring agency, or child-placing agency licensed under sections 71-1901 to 71-1906.01 on May 26, 2013, shall be deemed licensed under the Children's Residential Facilities and Placing Licensure Act until the license under such sections expires, and renewal shall be under the act.

(3) For purposes of requiring licensure, a residential child-caring agency or child-placing agency does not include an individual licensed as a foster family home under sections 71-1901 to 71-1906.01, a person licensed under the Health Care Facility Licensure Act, a person operating a juvenile detention facility as defined in section 83-4,125, a staff secure youth confinement facility operated by a county, or a person providing only casual care for children at irregular intervals. Such persons may voluntarily apply for a license.

Source: Laws 2013, LB265, § 4.

Cross References

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

71-1928 Applicant for license or renewal; application; requirements; contents.

(1) An applicant for an initial or renewal license to operate a residential child-caring agency or a child-placing agency shall file a written application with the department. To be licensed as a child-placing agency, an applicant must be a corporation, nonprofit corporation, or limited liability company. The application shall be accompanied by the applicable fees under section 71-1929 and shall set forth the full name and address of the agency to be licensed, the full name and address of the owner of the agency, the names of all persons in control of the agency, and additional information as required by the department, including sufficient affirmative evidence of the applicant's ability to comply with rules and regulations adopted and promulgated under the Children's Residential Facilities and Placing Licensure Act and evidence of adequate liability insurance or, if self-insured, of sufficient funds to pay liability claims. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be public record and may only be used for administrative purposes.

(2) The application shall be signed by:

(a) The owner, if the applicant for licensure as a residential child-caring agency is an individual or partnership;

(b) Two of its members, if the applicant for licensure as a residential child-caring agency or as a child-placing agency is a limited liability company;

(c) Two of its officers who have the authority to bind the corporation to the terms of the application, if the applicant for licensure as a residential child-caring agency or as a child-placing agency is a corporation or a nonprofit corporation; or

(d) The head of the governmental unit having jurisdiction over the residential child-caring agency or child-placing agency to be licensed, if the applicant is a governmental unit.

Source: Laws 2013, LB265, § 5.

71-1929 Fees.

Fees applicable to an applicant for an initial or renewal license under the Children's Residential Facilities and Placing Licensure Act include:

- (1) A nonrefundable license fee of twenty-five dollars;
- (2) A nonrefundable renewal license fee of twenty-five dollars;
- (3) A reinstatement fee of twenty-five dollars if the license has lapsed or has been suspended or revoked; and
- (4) A duplicate original license fee of ten dollars when a duplicate is requested.

Source: Laws 2013, LB265, § 6.

71-1930 Licenses; expiration date; not transferable or assignable; public inspection and display.

(1) Except as otherwise provided in the Children's Residential Facilities and Placing Licensure Act:

(a) Licenses issued under the act shall expire on uniform annual dates established by the department specified in rules and regulations; and

(b) Licenses shall be issued only for the premises and individuals named in the application and shall not be transferable or assignable.

(2) Licenses, license record information, and inspection reports shall be made available by the licensee for public inspection upon request and may be displayed in a conspicuous place on the licensed premises.

Source: Laws 2013, LB265, § 7.

71-1931 Separate license required; duties of licensee.

(1) An applicant for licensure under the Children's Residential Facilities and Placing Licensure Act shall obtain a separate license for each type of residential child-caring agency or child-placing agency that the applicant seeks to operate. A single license may be issued for a residential child-caring agency operating in separate buildings or structures on the same premises under one management.

(2) An applicant for licensure shall obtain a separate license for each type of placement service the applicant seeks to provide. When a child-placing agency has more than one office location, the child-placing agency shall inform the department of each office location and the services provided at each location. A single license may be issued for multiple offices, or the applicant may apply for individual licenses for each office location.

Source: Laws 2013, LB265, § 8.

71-1932 Provisional license; period valid; conversion to regular license.

A provisional license may be issued to an applicant for an initial residential child-caring agency or child-placing agency that substantially complies with requirements for licensure under the Children's Residential Facilities and

Placing Licensure Act and the rules and regulations adopted and promulgated under the act if the failure to fully comply with such requirements does not pose a danger to the children residing in or served by the residential child-caring agency or child-placing agency. Such provisional license shall be valid for a period of up to one year, shall not be renewed, and may be converted to a regular license upon a showing that the agency fully complies with the requirements for licensure under the act and rules and regulations.

Source: Laws 2013, LB265, § 9.

71-1933 Inspection by department; inspection report.

The department may inspect or provide for the inspection of residential child-caring agencies or child-placing agencies licensed under the Children's Residential Facilities and Placing Licensure Act in such manner and at such times as provided in rules and regulations adopted and promulgated by the department. The department shall issue an inspection report and provide a copy of the report to the agency within ten working days after the completion of an inspection.

Source: Laws 2013, LB265, § 10.

71-1934 State Fire Marshal; inspection; fee; delegation of authority; department; investigations authorized; delegation of authority.

(1) The department may request the State Fire Marshal to inspect any residential child-caring agency for fire safety under section 81-502. The State Fire Marshal shall assess a fee for such inspection under section 81-505.01 payable by the applicant or licensee. The State Fire Marshal may delegate the authority to make such inspections to qualified local fire prevention personnel under section 81-502.

(2) The department may investigate any residential child-caring agency to determine if the place or places to be covered by the license meet standards of sanitation and physical well-being set by the department for the care and protection of the children who may be placed with the residential child-caring agency. The department may delegate this authority to qualified local environmental health personnel.

Source: Laws 2013, LB265, § 11.

71-1935 Inspection report; findings of noncompliance; department; proceedings; letter requesting statement of compliance; contents; failure to correct; additional proceedings.

If the inspection report issued under section 71-1933 contains findings of noncompliance by a licensed residential child-caring agency or child-placing agency with any applicable provisions of the Children's Residential Facilities and Placing Licensure Act or rules and regulations adopted and promulgated under the act, the department shall review such findings within twenty working days after such inspection. If the findings are supported by the evidence, the department shall proceed under sections 71-1939 to 71-1946, except that if the findings indicate one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety, or welfare of the children residing in or served by the residential child-caring agency or child-placing agency, the department may send a letter to the agency requesting a statement of compliance. The letter

shall include a description of each violation, a request that the residential child-caring agency or child-placing agency submit a statement of compliance within ten working days, and a notice that the department may take further steps if the statement of compliance is not submitted. The statement of compliance shall indicate any steps which have been or will be taken to correct each violation and the period of time estimated to be necessary to correct each violation. If the residential child-caring agency or child-placing agency fails to submit and implement a statement of compliance which indicates a good faith effort to correct the violations, the department may proceed under sections 71-1939 to 71-1946.

Source: Laws 2013, LB265, § 12.

71-1936 Alleged violation of act; complaint; investigation; department; duties; confidentiality; immunity.

(1) Any person may submit a complaint to the department and request investigation of an alleged violation of the Children's Residential Facilities and Placing Licensure Act or rules and regulations adopted and promulgated under the act. The department shall review all complaints and determine whether to conduct an investigation. In making such determination, the department may consider factors such as:

(a) Whether the complaint pertains to a matter within the authority of the department to enforce;

(b) Whether the circumstances indicate that a complaint is made in good faith;

(c) Whether the complaint is timely or has been delayed too long to justify present evaluation of its merit;

(d) Whether the complainant may be a necessary witness if action is taken and is willing to identify himself or herself and come forward to testify if action is taken; or

(e) Whether the information provided or within the knowledge of the complainant is sufficient to provide a reasonable basis to believe that a violation has occurred or to secure necessary evidence from other sources.

(2) A complaint submitted to the department shall be confidential. An individual submitting a complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for submitting a complaint or for disclosure of documents, records, or other information to the department.

Source: Laws 2013, LB265, § 13.

71-1937 Licensee; discrimination or retaliation prohibited; cause of action for relief.

Licensees shall not discriminate or retaliate against an individual or the family of an individual residing in, served by, or employed at the residential child-caring agency or child-placing agency who has initiated or participated in any proceeding authorized by the Children's Residential Facilities and Placing Licensure Act or who has presented a complaint or provided information to the administrator of the residential child-caring agency or child-placing agency or

the department. Such individual may maintain an action for any type of relief, including injunctive and declaratory relief, permitted by law.

Source: Laws 2013, LB265, § 14.

71-1938 Emergency; department; powers; order; contents; hearing; order; petition for injunction; other enforcement measures.

(1) Whenever the department finds that an emergency exists requiring immediate action to protect the health, safety, or welfare of a child in a residential child-caring agency or child-placing agency, 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 or placement of children by 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) A copy of the order shall also be mailed to the holder of the license if the holder is not actually involved in the daily operation of the residential child-caring agency or child-placing agency. If the holder of the license is a corporation, a copy of the order shall be sent to the corporation's registered agent.

(3) The department may petition the appropriate district court for an injunction whenever there is the belief that any person is violating the Children's Residential Facilities and Placing Licensure Act, an order issued under the act, or any rule or regulation adopted and promulgated under 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. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, operate, or maintain a residential child-caring agency or a child-placing agency without obtaining a license to do so, without alleging any further or more particular facts concerning the charge.

Source: Laws 2013, LB265, § 15.

71-1939 Department; deny or refuse renewal of license; grounds.

The department may deny or refuse to renew a license under the Children's Residential Facilities and Placing Licensure Act to any residential child-caring agency or child-placing agency that fails to meet the requirements for licensure provided in the act or in rules and regulations adopted and promulgated under the act, including:

- (1) Failing an inspection under section 71-1933;
- (2) Having had a license revoked within the two-year period preceding application; or
- (3) Any of the grounds listed in section 71-1940.

Source: Laws 2013, LB265, § 16.

71-1940 Deny, refuse renewal, or take disciplinary action against license; grounds.

The department may deny, refuse to renew, or take disciplinary action against a license issued under the Children's Residential Facilities and Placing Licensure Act on any of the following grounds:

- (1) Failure to meet or violation of any of the requirements of the 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, admission, 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 children's residential care or child-placing services are 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; or
 - (g) Use of a weapon in the commission of an unlawful act;
- (4) Conduct or practices detrimental to the health, safety, or welfare of any individual residing in, served by, or employed at the residential child-caring agency or child-placing agency;
- (5) Failure to allow an agent or employee of the department access to the residential child-caring agency or child-placing agency for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the department;
- (6) Failure to allow local or state inspectors, investigators, or law enforcement officers access to the residential child-caring agency or child-placing agency 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, resolutions, or ordinances regulating licensees;
- (11) A history of misconduct or violations by an applicant or licensee involving children or vulnerable adults; or
- (12) Violation of any federal, state, or local law involving care of children.

Source: Laws 2013, LB265, § 17.

Cross References

Medication Aide Act, see section 71-6718.

71-1941 License; department; impose disciplinary actions; fine; how treated; recovery.

(1) The department may impose any one or a combination of the following types of disciplinary actions against the license of a residential child-caring agency or child-placing agency:

(a) A fine not to exceed ten thousand dollars per violation;

(b) A period of probation not to exceed two years, during which time the residential child-caring agency or child-placing agency may continue to operate under terms and conditions fixed by the order of probation;

(c) Restrictions on new admissions to a residential child-caring agency or acceptance of new referrals by a child-placing agency;

(d) Restrictions or other limitations on the number, gender, or age of children served by the residential child-caring agency or child-placing agency;

(e) Other restrictions or limitations on the type of service provided by the residential child-caring agency or child-placing agency;

(f) Suspension of the license for a period not to exceed three years, during which time the licensee shall not operate a residential child-caring agency or child-placing agency; or

(g) Revocation of the license. A former licensee whose license has been revoked shall not apply for a license for a minimum of two years after the date of revocation.

(2) Any fine imposed and unpaid under the Children's Residential Facilities and Placing Licensure 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 residential child-caring agency or child-placing agency is located. The department shall, within thirty days after receipt, remit fines to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2013, LB265, § 18.

71-1942 Disciplinary action; department; considerations.

In determining what type of disciplinary action to impose, the department may consider:

(1) The gravity of the violation, including the probability that death or serious physical or mental harm will result, the severity of the actual or potential harm, and the extent to which the provisions of applicable statutes, rules, and regulations were violated;

(2) The reasonableness of the diligence exercised by the licensee in identifying or correcting the violation;

(3) The degree of cooperation exhibited by the licensee in the identification, disclosure, and correction of the violation;

(4) Any previous violations committed by the licensee; and

(5) The financial benefit to the licensee of committing or continuing the violation.

Source: Laws 2013, LB265, § 19.

71-1943 Deny, refuse renewal of, or take disciplinary action against license; department; notice; contents; hearing.

(1) Except as provided in section 71-1938, if the department determines to deny, refuse renewal of, or take disciplinary action against a license, the department shall send to the applicant or licensee, by certified mail to the last-known address shown on the records of the department, 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, or regulation violated, and the type of disciplinary action which is pending. The denial, refusal to renew, 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 under section 71-1944.

(2) A copy of the notice in subsection (1) of this section shall also be mailed to the holder of the license if the holder is not actually involved in the daily operation of the residential child-caring agency or child-placing agency. If the holder of the license is a corporation, a copy of the notice shall be sent to the corporation's registered agent.

Source: Laws 2013, LB265, § 20.

71-1944 Applicant or licensee; notification to department; failure to notify department; effect.

(1) Within fifteen days after the mailing of a notice under section 71-1943, an applicant or licensee shall notify the department in writing that the applicant or licensee:

- (a) Desires to contest the notice and requests a hearing; or
- (b) Does not contest the notice.

(2) If the department does not receive notification within the fifteen-day period, the action of the department shall be final.

Source: Laws 2013, LB265, § 21.

71-1945 Applicant or licensee; hearing; procedure; director; decision; contents.

(1) If the applicant or licensee requests a hearing under section 71-1944, the department shall hold a hearing and give the applicant or licensee the right to present such evidence as may be proper. On the basis of such evidence, the director shall affirm, modify, or set aside the determination. A copy of such decision setting forth the findings of facts and the particular reasons upon which the decision is based shall be sent by either registered or certified mail to the applicant or licensee.

(2) 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 fees at a rate prescribed by rule and regulation.

Source: Laws 2013, LB265, § 22.

71-1946 Decision of department; appeal; procedure.

Any party to a decision of the department under the Children's Residential Facilities and Placing Licensure Act may appeal such decision. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2013, LB265, § 23.

Cross References

Administrative Procedure Act, see section 84-920.

71-1947 Lapsed license; reinstatement; suspension; probation; reinstatement; procedure; hearing; revoked license; revocation period.

(1) A license issued under the Children's Residential Facilities and Placing Licensure Act that has lapsed for nonpayment of fees is eligible for reinstatement at any time by applying to the department and paying the fees as provided in section 71-1929.

(2) A license that has been disciplined by being placed on suspension is eligible for reinstatement at the end of the period of suspension upon successful completion of an inspection and payment of the fees as provided in section 71-1929.

(3) A license that has been disciplined by being placed on probation is eligible for reinstatement at the end of the period of probation upon successful completion of an inspection if the department determines an inspection is warranted.

(4) A license that has been disciplined by being placed on probation or suspension may be reinstated prior to the completion of the term of such probation or suspension as provided in this subsection. Upon petition from a licensee and after consideration of materials submitted with such petition, the director may order an inspection or other investigation of the licensee. On the basis of material submitted by the licensee and the results of any inspection or investigation by the department, the director shall determine whether to grant full reinstatement of the license, to modify the probation or suspension, or to deny the petition for reinstatement. The director's decision shall become final fifteen days after mailing the decision to the licensee unless the licensee requests a hearing within such fifteen-day period. Any requested hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases. Any party to the decision shall have a right to judicial review under the Administrative Procedure Act.

(5) A license that has been disciplined by being revoked is not eligible for relicensure until two years after the date of such revocation. An application for an initial license may be made at the end of such two-year period.

Source: Laws 2013, LB265, § 24.

Cross References

Administrative Procedure Act, see section 84-920.

71-1948 Voluntary surrender of license.

A licensee may voluntarily surrender a license issued under the Children's Residential Facilities and Placing Licensure Act at any time, except that the department may refuse to accept a voluntary surrender of a license if the licensee is under investigation or if the department has initiated disciplinary action against the licensee.

Source: Laws 2013, LB265, § 25.

71-1949 Rules and regulations; contested cases; procedure.

(1) To protect the health, safety, and welfare of the public and to insure to the greatest extent possible the efficient, adequate, and safe care of children, the department may adopt and promulgate rules and regulations consistent with the Children's Residential Facilities and Placing Licensure Act as necessary for:

(a) The proper care and protection of children in residential child-caring agencies and child-placing agencies regulated under the act;

(b) The issuance, discipline, and reinstatement of licenses; and

(c) The proper administration of the act.

(2) Such rules and regulations shall establish standards for levels of care and services which may include, but are not limited to, supervision and structured activities designed to address the social, emotional, educational, rehabilitative, medical, and physical needs of children residing in or being placed by a residential child-caring agency or child-placing agency and may include the use of community resources to meet the needs of children and qualifications of staff.

(3) Contested cases of the department under the act shall be in accordance with the Administrative Procedure Act.

Source: Laws 2013, LB265, § 26.

Cross References

Administrative Procedure Act, see section 84-920.

71-1950 Violations; penalty.

Any person who establishes, operates, or maintains a residential child-caring agency or child-placing agency subject to the Children's Residential Facilities and Placing Licensure Act without first obtaining a license as required under the act or who violates any of the provisions of the act shall be guilty of a Class I misdemeanor. Each day such person operates after a first conviction shall be considered a subsequent offense.

Source: Laws 2013, LB265, § 27.

71-1951 Existing rules and regulations, licenses, and proceedings; how treated.

(1) All rules and regulations adopted and promulgated prior to May 26, 2013, under sections 71-1901 to 71-1906.01 or other statutes amended by Laws 2013, LB265, may continue to be effective under the Children's Residential Facilities and Placing Licensure Act to the extent not in conflict with the act.

(2) All licenses issued prior to May 26, 2013, in accordance with sections 71-1901 to 71-1906.01 or other statutes amended by Laws 2013, LB265, shall remain valid as issued for purposes of the Children's Residential Facilities and Placing Licensure Act unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to May 26, 2013, under sections 71-1901 to 71-1906.01 or other statutes amended by Laws 2013, LB265, shall be subject to the provisions of sections 71-1901 to 71-1906.01 or such other statutes as they existed prior to May 26, 2013.

Source: Laws 2013, LB265, § 28.

(d) STEP UP TO QUALITY CHILD CARE ACT

71-1952 Act, how cited.

Sections 71-1952 to 71-1964 shall be known and may be cited as the Step Up to Quality Child Care Act.

Source: Laws 2013, LB507, § 1.

71-1953 Purposes of act.

The purposes of the Step Up to Quality Child Care Act are to (1) provide accountability for public funds invested in child care and early childhood education programs, (2) provide a path to higher quality for child care and early childhood education programs, (3) provide parents a tool by which to evaluate the quality of child care and early childhood education programs, and (4) improve child development and school readiness outcomes.

Source: Laws 2013, LB507, § 2.

71-1954 Terms, defined.

For purposes of the Step Up to Quality Child Care Act:

(1) Applicable child care and early childhood education programs include:

(a) Child care programs licensed under the Child Care Licensing Act which serve children from birth to kindergarten-entrance age;

(b) Prekindergarten services and prekindergarten programs established pursuant to section 79-1104; and

(c) The federal Head Start programs, 42 U.S.C. 9831 et seq., and Early Head Start programs, 42 U.S.C. 9840a; and

(2) Fiscal year means the fiscal year of the State of Nebraska.

Source: Laws 2013, LB507, § 3.

Cross References

Child Care Licensing Act, see section 71-1908.

71-1955 Quality rating and improvement system; State Department of Education; Department of Health and Human Services; duties.

The State Department of Education and the Department of Health and Human Services shall collaborate (1) to develop, implement, and provide oversight for a quality rating and improvement system for participating applicable child care and early childhood education programs, (2) to establish quality rating criteria for the system as provided in sections 71-1956 and 71-1958, (3) to use the quality rating criteria to assign quality scale ratings to participating applicable child care and early childhood education programs as provided in sections 71-1956 and 71-1958, and (4) to provide incentives and support, including professional development, training, and postsecondary education

opportunities, to participating applicable child care and early childhood education programs as provided in section 71-1961.

Source: Laws 2013, LB507, § 4.

71-1956 Child care and early childhood education program; rating; quality rating criteria.

(1) Each applicable child care and early childhood education program which applies under section 71-1957 to participate in the quality rating and improvement system developed pursuant to section 71-1955 shall be rated on a quality scale using ratings labeled steps one through five and based on quality rating criteria.

(2) Quality rating criteria shall be used to assign a quality scale rating as appropriate for the specific step. The criteria shall include, but not be limited to:

- (a) Licensing requirements as specified in the Child Care Licensing Act;
- (b) Facility safety and management;
- (c) Child development and school readiness outcomes;
- (d) Program curriculum, learning environment, and adult-child interactions;
- (e) Professional development and training;
- (f) Family engagement;
- (g) Program administration;
- (h) Standards used by nationally recognized accrediting bodies approved by the State Department of Education; and
- (i) Other standards as required by the State Department of Education for prekindergarten services and prekindergarten programs established pursuant to section 79-1104 and federal performance standards for Head Start and Early Head Start programs.

Source: Laws 2013, LB507, § 5.

Cross References

Child Care Licensing Act, see section 71-1908.

71-1957 Participation in quality rating and improvement system.

Application to participate in the quality rating and improvement system shall be voluntary for applicable child care and early childhood education programs with the following exceptions:

(1) Beginning July 1, 2014, and not later than December 31, 2014, each applicable child care or early childhood education program that received over five hundred thousand dollars in child care assistance pursuant to section 68-1202 for FY2011-12 shall apply to participate in the quality rating and improvement system and shall be assigned a quality scale rating as provided in sections 71-1956 and 71-1958;

(2) Beginning July 1, 2015, and not later than December 31, 2015, each applicable child care or early childhood education program that received over two hundred fifty thousand dollars in child care assistance pursuant to section 68-1202 for FY2011-12 shall apply to participate in the quality rating and improvement system and shall be assigned a quality scale rating as provided in sections 71-1956 and 71-1958; and

(3) Beginning July 1, 2016, each applicable child care or early childhood education program that received over two hundred fifty thousand dollars in child care assistance pursuant to section 68-1202 in the preceding fiscal year shall, not later than December 31 of the applicable year or six months after actual receipt of such assistance, whichever is later, apply to participate in the quality rating and improvement system and shall be assigned a quality scale rating as provided in sections 71-1956 and 71-1958.

Source: Laws 2013, LB507, § 6.

71-1958 Quality scale rating; application; assignment of rating.

(1) Quality rating criteria shall be used as provided in this section to assign a quality scale rating to each applicable child care or early childhood education program if the program applies under section 71-1957 to participate in the quality rating and improvement system developed pursuant to section 71-1955.

(2) Licensure under the Child Care Licensing Act for a program which serves children from birth to kindergarten-entrance age shall be sufficient criteria to be rated at step one.

(3) Meeting criteria established by the State Department of Education for a prekindergarten service or prekindergarten program established pursuant to section 79-1104 and reporting to the Nebraska Early Childhood Professional Record System created under section 71-1962 shall be sufficient criteria to be rated at step three.

(4) Meeting performance standards required by the federal government for a federal Head Start program or Early Head Start program and reporting to the Nebraska Early Childhood Professional Record System created under section 71-1962 shall be sufficient criteria to be rated at step three.

(5) Accreditation by a nationally recognized accrediting body approved by the State Department of Education and reporting to the Nebraska Early Childhood Professional Record System created under section 71-1962 shall be sufficient criteria to be rated at step three.

(6) A participating applicable child care or early childhood education program operating under a provisional license shall have a quality scale rating at step one even if it meets other quality rating criteria. If a participating applicable child care or early childhood education program is at a quality scale rating higher than step one and the program's license is placed on corrective action status, disciplinary limitation, probation, or suspension, such program shall have its quality scale rating changed to step one. If an applicable child care or early childhood education program's license is revoked, the program is not eligible to participate in or receive a quality scale rating under the quality rating and improvement system until the program has an operating license which is in full force and effect.

Source: Laws 2013, LB507, § 7.

Cross References

Child Care Licensing Act, see section 71-1908.

71-1959 Quality scale rating review; reevaluation.

(1) An applicable child care or early childhood education program participating in the quality rating and improvement system developed pursuant to section

71-1955 may apply no more than once each fiscal year to have its quality scale rating reviewed.

(2) A participant shall meet all of the quality rating criteria for a step-two rating prior to applying for a step-three, step-four, or step-five rating. To meet quality rating criteria for a step-three, step-four, or step-five rating, a participant shall be independently evaluated based upon the quality rating criteria.

(3) A participant with a quality scale rating at step two through step four shall be reevaluated at least once every two fiscal years but no more than once in any fiscal year, including any review pursuant to subsection (1) of this section. A participant with a quality scale rating at step five shall be reevaluated at least once every five years but no more than once in any fiscal year. If a participant has achieved accreditation and is being reevaluated by a nationally recognized accrediting body approved by the State Department of Education, the state shall make reasonable efforts to conduct its reevaluation in the same fiscal year that the accrediting body is reevaluating the program.

Source: Laws 2013, LB507, § 8.

71-1960 License under Child Care Licensing Act; denial of license or disciplinary act authorized.

The Department of Health and Human Services may deny the issuance of or take disciplinary action against a license issued under the Child Care Licensing Act to a participating applicable child care or early childhood education program for failure to comply with the Step Up to Quality Child Care Act.

Source: Laws 2013, LB507, § 9.

Cross References

Child Care Licensing Act, see section 71-1908.

71-1961 Quality rating and improvement system incentives and support.

Quality rating and improvement system incentives and support under the Step Up to Quality Child Care Act shall include, but not be limited to:

(1) Tiered child care subsidy reimbursements as provided in section 68-1206 based upon quality scale ratings of step three or higher that reflect the cost of higher quality programs and promote affordability of high-quality child care and early childhood education programs for all families;

(2) Incentive bonuses given to providers of child care and early childhood education programs upon completion of specific requirements of step two ratings or higher to improve quality based upon the quality rating criteria established pursuant to sections 71-1956 and 71-1958;

(3) Professional development, training, and scholarships developed in collaboration with community-based organizations, postsecondary education representatives, and other stakeholders;

(4) Support that expands family engagement in and understanding of high-quality early childhood education in ways that are inclusive and respectful of diversity of families and children with special needs; and

(5) Other incentives as necessary to carry out the Step Up to Quality Child Care Act.

Source: Laws 2013, LB507, § 10.

71-1962 Nebraska Early Childhood Professional Record System; creation and operation; State Department of Education; duties.

(1) Not later than March 1, 2014, the State Department of Education shall create and operate the Nebraska Early Childhood Professional Record System. The system shall be designed in order to:

- (a) Establish a data base of Nebraska's early childhood education workforce;
- (b) Verify educational degrees and professional credentials held and relevant training completed by employees of participating applicable child care and early childhood education programs; and
- (c) Provide such information to the Department of Health and Human Services for use in evaluating applications to be rated at a step above step one under section 71-1959.

(2) When an applicable child care or early childhood education program participating in the quality rating and improvement system developed pursuant to section 71-1955 applies under section 71-1959 to be rated at a step above step one, the child care or early childhood education program shall report the educational degrees and professional credentials held and relevant training completed by its child care and early childhood education employees to the Nebraska Early Childhood Professional Record System for the program to be eligible for a quality scale rating above step one.

Source: Laws 2013, LB507, § 11.

71-1963 Quality scale ratings available on web site; when.

By July 1, 2017, the Department of Health and Human Services in collaboration with the State Department of Education shall make the quality scale ratings of participating applicable child care and early childhood education programs under the quality rating and improvement system developed pursuant to section 71-1955 available on a publicly accessible web site to provide parents a tool by which to evaluate the quality of child care and early childhood education programs and to promote accountability for public funding of such programs.

Source: Laws 2013, LB507, § 12.

71-1964 Rules and regulations.

The State Department of Education and the Department of Health and Human Services may adopt and promulgate rules and regulations to carry out the Step Up to Quality Child Care Act.

Source: Laws 2013, LB507, § 13.

ARTICLE 20**HOSPITALS****(d) MEDICAL AND HOSPITAL CARE**

Section

- 71-2046. Repealed. Laws 2011, LB 431, § 17.
- 71-2047. Repealed. Laws 2011, LB 431, § 17.
- 71-2048. Repealed. Laws 2011, LB 431, § 17.
- 71-2048.01. Clinical privileges; standards and procedures.
 - (f) COOPERATIVE VENTURES BY PUBLIC HOSPITALS
- 71-2057. Terms, defined.

Section

- 71-2059. Governmental body; powers.
 71-2061. Public hospital; indebtedness, how construed; expenditures, limitation; membership interests and contractual joint ventures; how construed.

(l) NONPROFIT HOSPITAL SALE ACT

- 71-20,104. Acquisition of hospital; approval required; exception; notice; application; procedure.

(d) MEDICAL AND HOSPITAL CARE

71-2046 Repealed. Laws 2011, LB 431, § 17.

71-2047 Repealed. Laws 2011, LB 431, § 17.

71-2048 Repealed. Laws 2011, LB 431, § 17.

71-2048.01 Clinical privileges; standards and procedures.

Any hospital required to be licensed under the Health Care Facility Licensure Act shall not deny clinical privileges to physicians and surgeons, podiatrists, osteopathic physicians, osteopathic physicians and surgeons, certified nurse midwives, licensed psychologists, or dentists solely by reason of the credential held by the practitioner. Each such hospital shall establish reasonable standards and procedures to be applied when considering and acting upon an application for medical staff membership and privileges. Once an application is determined to be complete by the hospital and is verified in accordance with such standards and procedures, the hospital shall notify the applicant of its initial recommendation regarding membership and privileges within one hundred twenty days.

Source: Laws 1989, LB 646, § 1; Laws 1998, LB 1073, § 122; Laws 2000, LB 819, § 99; Laws 2011, LB68, § 1.

Cross References

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

(f) COOPERATIVE VENTURES BY PUBLIC HOSPITALS

71-2057 Terms, defined.

For purposes of sections 71-2056 to 71-2061, unless the context otherwise requires:

(1) Hospital health services means, but is not limited to, any health care clinical, diagnostic, or rehabilitation service and any administrative, managerial, health system, or operational service incident to such service;

(2) Market strategy means any plan, strategy, or device developed or intended to promote, sell, or offer to sell any hospital health service;

(3) Strategic plan means any plan, strategy, or device developed or intended to construct, operate, or maintain a health facility or to engage in providing, promoting, or selling a hospital health service; and

(4) Tangible benefit means, but is not limited to, any (a) reasonable expectation of a demonstrable increase in or maintenance of usage of the provider's services, (b) contractual provision requiring quality control of patient care and participation in a resource monitoring procedure, (c) reasonable expectation of

prompt payment for any service rendered, or (d) activity that promotes health or furthers the provider's mission.

Source: Laws 1985, LB 61, § 2; Laws 1995, LB 366, § 5; Laws 2012, LB995, § 13.

71-2059 Governmental body; powers.

A political subdivision, state agency, or other governmental entity which owns or operates a hospital or hospital health service may, relative to the delivery of health care services:

(1) Enter into agreements with other health care providers, both governmental and nongovernmental, to share services or provide a tangible benefit to the hospital and into other cooperative ventures;

(2) Join or sponsor membership in organizations or associations intended to benefit the hospital or hospitals in general;

(3) Enter into contractual joint ventures with other governmental hospitals and health care organizations or nonprofit hospitals and health care organizations when entering into such a joint venture provides a tangible benefit to the residents of the political subdivision, state agency, or other governmental entity that owns or operates a hospital or health service;

(4) Hold a membership interest in a nonprofit corporation when holding such interest provides a tangible benefit to the residents of the political subdivision, state agency, or other governmental entity that owns or operates a hospital or health service;

(5) Have members of its governing authority or its officers or administrators serve without pay as directors or officers of any such venture;

(6) Offer, directly or indirectly, products and services of the hospital or any such venture to the general public; and

(7) Acquire, erect, staff, equip, or operate one or more medical office buildings, clinic buildings, or other buildings or parts thereof for medical services both within and outside the jurisdiction of the political subdivision, state agency, or other governmental entity. Such buildings or parts may be freestanding facilities or additions to or parts of an existing hospital or health care facility. Unless the political subdivision, state agency, or other governmental entity declares otherwise, the building or parts shall be considered an addition or improvement to the existing facilities. The political subdivision, state agency, or other governmental entity may lease all or part of such building to one or more health care practitioners or groups of health care practitioners or otherwise allow health care practitioners the use thereof on such terms as the political subdivision, state agency, or other governmental entity deems appropriate. Such lease or other use shall not be required to comply with public bidding requirements or approval of the electorate.

Source: Laws 1985, LB 61, § 4; Laws 1992, LB 1019, § 77; Laws 1993, LB 121, § 430; Laws 2012, LB995, § 14.

71-2061 Public hospital; indebtedness, how construed; expenditures, limitation; membership interests and contractual joint ventures; how construed.

(1) All agreements and obligations undertaken and all securities issued, as permitted under sections 71-2056 to 71-2061, by a hospital which is owned or operated by a political subdivision, state agency, or other governmental entity

shall be exclusively an obligation of the hospital and shall not create an obligation or debt of the state or any political subdivision, state agency, or other governmental entity. The full faith and credit of the state or of any political subdivision, state agency, or other governmental entity shall not be pledged for the payment of any securities issued by such a hospital, nor shall the state or any political subdivision, state agency, or other governmental entity be liable in any manner for the payment of the principal of or interest on any securities of such a hospital or for the performance of any pledge, mortgage, obligation, or agreement of any kind that may be undertaken by such a hospital.

(2) Expenditures permitted by sections 71-2056 to 71-2061 to be made by or on behalf of a hospital shall be for operating and maintaining public hospitals and public facilities for a public purpose. No such expenditure shall be considered to be a giving or lending of the credit of the state, or a granting of public money or a thing of value, in aid of any individual, association, or corporation within the meaning of any constitutional or statutory provision.

(3) Membership interests and contractual joint ventures permitted by section 71-2059 that further the purposes of the political subdivision, state agency, or other governmental entity shall not be considered to cause the political subdivision, state agency, or other governmental entity to become a subscriber or owner of capital stock or any interest in a private corporation or association within the meaning of Nebraska law.

Source: Laws 1985, LB 61, § 6; Laws 2012, LB995, § 15.

(I) NONPROFIT HOSPITAL SALE ACT

71-20,104 Acquisition of hospital; approval required; exception; notice; application; procedure.

(1) No person shall engage in the acquisition of a hospital owned by a nonprofit corporation without first having applied for and received the approval of the department and without first having notified the Attorney General and, if applicable, received approval from the Attorney General pursuant to the Nonprofit Hospital Sale Act. No person shall engage in the acquisition of a hospital not owned by a nonprofit corporation without first having applied for and received the approval of the department pursuant to the act unless such acquiring person is a nonprofit corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code or is a governmental entity. For purposes of the act, approval of the department and the Attorney General shall not be required for the acquisition of a hospital not owned by a nonprofit corporation as follows: (a) The lease or sale of a county hospital approved under subdivision (3) of section 23-3504; or (b) the dissolution of a hospital district approved under sections 23-3544 to 23-3546 or the merger of hospital districts approved under sections 23-3573 to 23-3578.

(2) Any person not required to obtain the approval of the department under the Nonprofit Hospital Sale Act shall give the Attorney General at least thirty days' notice of an impending acquisition, during which time the Attorney General may take any necessary and appropriate action consistent with his or her general duties of oversight with regard to the conduct of charities. The notice shall briefly describe the impending acquisition, including any change in ownership of tangible or intangible assets.

(3) The application shall be submitted to the department and the Attorney General on forms provided by the department and shall include the name of the seller, the name of the purchaser or other parties to an acquisition, the terms of the proposed agreement, the sale price, a copy of the acquisition agreement, a financial and economic analysis and report from an independent expert or consultant of the effect of the acquisition under the criteria set forth in section 71-20,108, and all other related documents. A copy of the application and copies of all additional related materials shall be submitted to the department and to the Attorney General at the same time. The applications and all related documents shall be considered public records for purposes of sections 84-712 to 84-712.09.

Source: Laws 1996, LB 1188, § 3; Laws 2012, LB995, § 16.

**ARTICLE 21
INFANTS**

Section
71-2102. Shaken baby syndrome; legislative findings.

71-2102 Shaken baby syndrome; legislative findings.

The Legislature finds that shaken baby syndrome is the medical term used to describe the violent shaking of an infant or child and the injuries or other results sustained by the infant or child. The Legislature further finds that shaken baby syndrome may occur when an infant or child is violently shaken as part of a pattern of abuse or because an adult has momentarily succumbed to the frustration of responding to a crying infant or child. The Legislature further finds that these injuries can include brain swelling and damage, subdural hemorrhage, intellectual disability, or death. The Legislature further finds and declares that there is a present and growing need to provide programs aimed at reducing the number of cases of shaken baby syndrome in Nebraska.

Source: Laws 2006, LB 994, § 148; Laws 2013, LB23, § 33.

**ARTICLE 24
DRUGS**

(c) EMERGENCY BOX DRUG ACT

Section
71-2411. Terms, defined.
71-2417. Controlled substance; exemption.
(e) RETURN OF DISPENSED DRUGS AND DEVICES
71-2421. Collection or return of dispensed drugs and devices; conditions; fee; liability; professional disciplinary action.
(j) AUTOMATED MEDICATION SYSTEMS ACT
71-2444. Act, how cited.
71-2445. Terms, defined.
71-2446. Automated machine prohibited.
71-2447. Hospital, long-term care facility, or pharmacy; use of automated medication system; policies and procedures required.
71-2448. Prescription medication distribution machine; requirements; location.
71-2449. Automated medication distribution machine; requirements; drugs; limitations; inventory; how treated.
71-2451. Long-term care facility; annual license; application; contents; inspection; pharmacist; duties; dispensing of drugs; labeling requirements.

Section

71-2451.01. Management of long-term care facility; prohibited acts.

71-2452. Violations; disciplinary action.

(k) CORRECTIONAL FACILITIES AND JAILS RELABELING AND REDISPENSING

71-2453. Department of Correctional Services facilities, detention facilities, or jails; prescription drug or device; return for credit or relabeling and redispensing; requirements; liability; professional disciplinary action.

(l) PRESCRIPTION DRUG MONITORING PROGRAM

71-2454. Prescription drug monitoring; legislative intent.

71-2455. Prescription drug monitoring; Department of Health and Human Services; duties; powers.

71-2456. Prescription Drug Monitoring Program Fund; created; investment.

(c) EMERGENCY BOX DRUG ACT

71-2411 Terms, defined.

For purposes of the Emergency Box Drug Act:

(1) Authorized personnel means any medical doctor, doctor of osteopathy, registered nurse, licensed practical nurse, nurse practitioner, pharmacist, or physician assistant;

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

(3) Drug means 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 means 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) Long-term care facility means an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(6) Multiple dose vial means any bottle in which more than one dose of a liquid drug is stored or contained;

(7) Pharmacist means a pharmacist as defined in section 38-2832 who is employed by a supplying pharmacy or who has contracted with a long-term care facility to provide consulting services; and

(8) Supplying pharmacy means a pharmacy that supplies drugs for an emergency box located in a long-term care facility. Drugs in the emergency box are owned by the supplying pharmacy.

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; Laws 2009, LB195, § 69; Laws 2013, LB23, § 34.

Cross References

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

71-2417 Controlled substance; exemption.

Any emergency box containing a controlled substance listed in section 28-405 and maintained at a long-term care facility shall be exempt from subsection (3) of section 28-414.03.

Source: Laws 1994, LB 1210, § 189; Laws 1995, LB 406, § 38; Laws 1999, LB 594, § 59; Laws 2001, LB 398, § 72; Laws 2009, LB195, § 74; Laws 2014, LB811, § 27.
Effective date July 18, 2014.

(e) RETURN OF DISPENSED DRUGS AND DEVICES

71-2421 Collection or return of dispensed drugs and devices; conditions; fee; liability; professional disciplinary action.

(1) To protect the public safety, dispensed drugs or devices:

(a) May be collected in a pharmacy for disposal;

(b) May be returned to a pharmacy in response to a recall by the manufacturer, packager, or distributor or if a device is defective or malfunctioning;

(c) Shall not be returned to saleable inventory nor made available for subsequent relabeling and redispensing, except as provided in subdivision (1)(d) of this section; or

(d) May be returned from a long-term care facility to the pharmacy from which they were dispensed for credit or for relabeling and redispensing, 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 pharmacist. 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 container which is impermeable to moisture and approved by the Board of Pharmacy.

(2) Pharmacies may charge a fee for collecting dispensed drugs or devices for disposal or from a long-term care facility for credit or for relabeling and redispensing.

(3) Any person or entity which exercises reasonable care in collecting dispensed drugs or devices for disposal or from a long-term care facility for credit or for relabeling and redispensing pursuant to this section shall be immune from civil or criminal liability or professional disciplinary action of any kind for any injury, death, or loss to person or property relating to such activities.

(4) A drug manufacturer which exercises reasonable care shall be immune from civil or criminal liability for any injury, death, or loss to persons or property relating to the relabeling and redispensing of drugs returned from a long-term care facility.

(5) Notwithstanding subsection (4) of this section, the relabeling and redispensing of drugs returned from a long-term care facility does not absolve a

drug manufacturer of any criminal or civil liability that would have existed but for the relabeling and redispensing and such relabeling and redispensing does not increase the liability of such drug manufacturer that would have existed but for the relabeling and redispensing.

(6) For purposes of this section:

(a) Calculated expiration date means the expiration date on the manufacturer's, packager's, or distributor's container or one year from the date the drug or device is repackaged, whichever is earlier;

(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; Laws 2011, LB274, § 1.

Cross References

Pharmacy Practice Act, see section 38-2801.

(j) AUTOMATED MEDICATION SYSTEMS ACT

71-2444 Act, how cited.

Sections 71-2444 to 71-2452 shall be known and may be cited as the Automated Medication Systems Act.

Source: Laws 2008, LB308, § 1; Laws 2013, LB326, § 3.

71-2445 Terms, defined.

For purposes of the Automated Medication Systems Act:

(1) Automated medication distribution machine means a type of automated medication system that stores medication to be administered to a patient by a person credentialed under the Uniform Credentialing Act;

(2) Automated medication system means a mechanical system that performs operations or activities, other than compounding, administration, or other technologies, relative to storage and packaging for dispensing or distribution of medications and that collects, controls, and maintains all transaction information and includes, but is not limited to, a prescription medication distribution machine or an automated medication distribution machine. An automated medication system may only be used in conjunction with the provision of pharmacist care;

(3) Chart order means an order for a drug or device issued by a practitioner for a patient who is in the hospital where the chart is stored, for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412, or for a resident in a long-term care facility in which a long-term care automated pharmacy is located from which drugs will be dispensed. Chart order does not include a prescription;

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

(5) Long-term care automated pharmacy means a designated area in a long-term care facility where an automated medication system is located, that stores medications for dispensing pursuant to a medical order to residents in such

long-term care facility, that is installed and operated by a pharmacy licensed under the Health Care Facility Licensure Act, and that is licensed under section 71-2451;

(6) Long-term care facility means an intermediate care facility, an intermediate care facility for persons with developmental disabilities, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(7) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(8) Pharmacist means any person who is licensed by the State of Nebraska to practice pharmacy;

(9) Pharmacist care means the provision by a pharmacist of medication therapy management, with or without the dispensing of drugs or devices, intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process;

(10) Pharmacist remote order entry means entering an order into a computer system or drug utilization review by a pharmacist licensed to practice pharmacy in the State of Nebraska and located within the United States, pursuant to medical orders in a hospital, long-term care facility, or pharmacy licensed under the Health Care Facility Licensure Act;

(11) Practice of pharmacy means (a) the interpretation, evaluation, and implementation of a medical order, (b) the dispensing of drugs and devices, (c) drug product selection, (d) the administration of drugs or devices, (e) drug utilization review, (f) patient counseling, (g) the provision of pharmaceutical care, and (h) the responsibility for compounding and labeling of dispensed or repackaged drugs and devices, proper and safe storage of drugs and devices, and maintenance of proper records. The active practice of pharmacy means the performance of the functions set out in this subdivision by a pharmacist as his or her principal or ordinary occupation;

(12) Practitioner means a certified registered nurse anesthetist, a certified nurse midwife, a dentist, an optometrist, a nurse practitioner, a physician assistant, a physician, a podiatrist, or a veterinarian;

(13) Prescription means an order for a drug or device issued by a practitioner for a specific patient, for emergency use, or for use in immunizations. Prescription does not include a chart order;

(14) Prescription medication distribution machine means a type of automated medication system that packages, labels, or counts medication in preparation for dispensing of medications by a pharmacist pursuant to a prescription; and

(15) Telepharmacy means the provision of pharmacist care, by a pharmacist located within the United States, using telecommunications, remote order entry, or other automations and technologies to deliver care to patients or their agents who are located at sites other than where the pharmacist is located.

Source: Laws 2008, LB308, § 2; Laws 2009, LB195, § 75; Laws 2013, LB23, § 35; Laws 2013, LB326, § 4.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

71-2446 Automated machine prohibited.

Any automated machine that dispenses, delivers, or makes available, other than by administration, prescription medication directly to a patient or caregiver without the provision of pharmacist care is prohibited.

Source: Laws 2008, LB308, § 3; Laws 2013, LB326, § 5.

71-2447 Hospital, long-term care facility, or pharmacy; use of automated medication system; policies and procedures required.

Any hospital, long-term care facility, or pharmacy that uses an automated medication system shall develop, maintain, and comply with policies and procedures developed in consultation with the pharmacist responsible for pharmacist care for that hospital, long-term care facility, or pharmacy. At a minimum, the policies and procedures shall address the following:

- (1) The description and location within the hospital, long-term care facility, or pharmacy of the automated medication system or equipment being used;
- (2) The name of the pharmacist responsible for implementation of and compliance with the policies and procedures;
- (3) Medication access and information access procedures;
- (4) Security of inventory and confidentiality of records in compliance with state and federal laws, rules, and regulations;
- (5) A description of the process used by a pharmacist or pharmacy technician for filling an automated medication system;
- (6) A description of how and by whom the automated medication system is being utilized, including processes for verifying, dispensing, and distributing medications;
- (7) Staff education and training;
- (8) Quality assurance and quality improvement programs and processes;
- (9) Inoperability or emergency downtime procedures;
- (10) Periodic system maintenance; and
- (11) Medication security and controls.

Source: Laws 2008, LB308, § 4; Laws 2009, LB195, § 76; Laws 2013, LB326, § 6.

71-2448 Prescription medication distribution machine; requirements; location.

A prescription medication distribution machine:

- (1) Is subject to the requirements of section 71-2447 and, if it is in a long-term care automated pharmacy, is subject to section 71-2451; and
- (2) May be operated only (a) in a licensed pharmacy where a pharmacist dispenses medications to patients for self-administration pursuant to a prescription or (b) in a long-term care automated pharmacy subject to section 71-2451.

Source: Laws 2008, LB308, § 5; Laws 2013, LB326, § 7.

71-2449 Automated medication distribution machine; requirements; drugs; limitations; inventory; how treated.

- (1) An automated medication distribution machine:

(a) Is subject to the requirements of section 71-2447 and, if it is in a long-term care automated pharmacy, is subject to section 71-2451; and

(b) May be operated in a hospital or long-term care facility for medication administration pursuant to a chart order or prescription by a licensed health care professional.

(2) Drugs placed in an automated medication distribution machine shall be in the manufacturer's original packaging or in containers repackaged in compliance with state and federal laws, rules, and regulations relating to repackaging, labeling, and record keeping.

(3) The inventory which is transferred to an automated medication distribution machine in a hospital shall be excluded from the percent of total prescription drug sales revenue described in section 71-7454.

Source: Laws 2008, LB308, § 6; Laws 2009, LB195, § 77; Laws 2013, LB326, § 8.

71-2451 Long-term care facility; annual license; application; contents; inspection; pharmacist; duties; dispensing of drugs; labeling requirements.

(1) In order for an automated medication system to be operated in a long-term care facility, a pharmacist in charge of a pharmacy licensed under the Health Care Facility Licensure Act and located in Nebraska shall annually license the long-term care automated pharmacy in which the automated medication system is located.

(2) The pharmacist in charge of a licensed pharmacy shall submit an application for licensure or renewal of licensure to the Division of Public Health of the Department of Health and Human Services with a fee in the amount of the fee the pharmacy pays for licensure or renewal. The application shall include:

(a) The name and location of the licensed pharmacy;

(b) If controlled substances are stored in the automated medication system, the federal Drug Enforcement Administration registration number of the licensed pharmacy. After the long-term care automated pharmacy is registered with the federal Drug Enforcement Administration, the pharmacist in charge of the licensed pharmacy shall provide the federal Drug Enforcement Administration registration number of the long-term care automated pharmacy to the division and any application for renewal shall include such registration number;

(c) The location of the long-term care automated pharmacy; and

(d) The name of the pharmacist in charge of the licensed pharmacy.

(3) As part of the application process, the division shall conduct an inspection by a pharmacy inspector as provided in section 38-28,101 of the long-term care automated pharmacy. The division shall also conduct inspections of the operation of the long-term care automated pharmacy as necessary.

(4) The division shall license a long-term care automated pharmacy which meets the licensure requirements of the Automated Medication Systems Act.

(5) A pharmacist in charge of a licensed pharmacy shall apply for a separate license for each location at which it operates one or more long-term care automated pharmacies. The licensed pharmacy shall be the provider pharmacy for the long-term care automated pharmacy.

(6) The pharmacist in charge of the licensed pharmacy operating a long-term care automated pharmacy shall:

(a) Identify a pharmacist responsible for the operation, supervision, policies, and procedures of the long-term care automated pharmacy;

(b) Implement the policies and procedures developed to comply with section 71-2447;

(c) Assure compliance with the drug storage and record-keeping requirements of the Pharmacy Practice Act;

(d) Assure compliance with the labeling requirements of subsection (8) of this section;

(e) Develop and implement policies for the verification of drugs by a pharmacist prior to being loaded into the automated medication system or for the verification of drugs by a pharmacist prior to being released for administration to a resident;

(f) Develop and implement policies for inventory, security, and accountability for controlled substances; and

(g) Assure that each medical order is reviewed by a pharmacist prior to the release of the drugs by the automated medication system. Emergency doses may be taken from an automated medication system prior to review by a pharmacist if the licensed pharmacy develops and implements policies for emergency doses.

(7) Supervision by a pharmacist is sufficient for compliance with the requirement of subdivision (6)(a) of this section if the pharmacist in the licensed pharmacy monitors the automated medication system electronically and keeps records of compliance with such requirement for five years.

(8) Each drug dispensed from a long-term care automated pharmacy shall be in a package with a label containing the following information:

(a) The name and address of the long-term care automated pharmacy;

(b) The prescription number;

(c) The name, strength, and dosage form of the drug;

(d) The name of the resident;

(e) The name of the practitioner who prescribed the drug;

(f) The date of filling; and

(g) Directions for use.

(9) A prescription is required for any controlled substance dispensed from a long-term care automated pharmacy.

(10) The inventory which is transferred to a long-term care automated pharmacy shall be excluded from the percent of total prescription drug sales revenue described in section 71-7454.

Source: Laws 2013, LB326, § 9.

Cross References

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

Pharmacy Practice Act, see section 38-2801.

71-2451.01 Management of long-term care facility; prohibited acts.

Unless otherwise allowed by state or federal law or regulation, the management of a long-term care facility at which an automated medication system is located shall not require a resident of the facility to obtain medication through the automated medication system and shall not restrict or impair the ability of a resident of the facility to obtain medications from the pharmacy of the resident's choice.

Source: Laws 2013, LB326, § 10.

71-2452 Violations; disciplinary action.

Any person who violates the Automated Medication Systems Act may be subject to disciplinary action by the Division of Public Health of the Department of Health and Human Services under the Health Care Facility Licensure Act or the Uniform Credentialing Act.

Source: Laws 2008, LB308, § 8; Laws 2013, LB326, § 11.

Cross References

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

Uniform Credentialing Act, see section 38-101.

(k) CORRECTIONAL FACILITIES AND JAILS RELABELING AND REDISPENSING

71-2453 Department of Correctional Services facilities, detention facilities, or jails; prescription drug or device; return for credit or relabeling and redispensing; requirements; liability; professional disciplinary action.

(1) Prescription drugs or devices which have been dispensed pursuant to a valid prescription and delivered to a Department of Correctional Services facility, a criminal detention facility, a juvenile detention facility, or a jail for administration to a prisoner or detainee held at such facility or jail, but which are not administered to such prisoner or detainee, may be returned to the pharmacy from which they were dispensed under contract with the facility or jail for credit or for relabeling and redispensing and administration to another prisoner or detainee held at such facility or jail pursuant to a valid prescription as provided in this section.

(2)(a) The decision to accept return of a dispensed prescription drug or device for credit or for relabeling and redispensing rests solely with the pharmacist at the contracting pharmacy.

(b) A dispensed prescription drug or device shall be properly stored and in the control of the facility or jail at all times prior to the return of the drug or device for credit or for relabeling and redispensing. The drug or device shall be returned in the original and unopened labeled container dispensed by the pharmacist with the tamper-evident seal intact, and the container shall bear the expiration date or calculated expiration date and lot number of the drug or device.

(c) A prescription drug or device shall not be returned or relabeled and redispensed under this section if the drug or device is a controlled substance or if the relabeling and redispensing is otherwise prohibited by law.

(3) For purposes of this section:

(a) Administration has the definition found in section 38-2807;

(b) Calculated expiration date has the definition found in section 71-2421;

- (c) Criminal detention facility has the definition found in section 83-4,125;
- (d) Department of Correctional Services facility has the definition of facility found in section 83-170;
- (e) Dispense or dispensing has the definition found in section 38-2817;
- (f) Jail has the definition found in section 47-117;
- (g) Juvenile detention facility has the definition found in section 83-4,125;
- (h) Prescription has the definition found in section 38-2840; and
- (i) Prescription drug or device has the definition found in section 38-2841.

(4) The Jail Standards Board, in consultation with the Board of Pharmacy, shall adopt and promulgate rules and regulations relating to the return of dispensed prescription drugs or devices for credit, relabeling, or redispensing under this section, including, but not limited to, rules and regulations relating to (a) education and training of persons authorized to administer the prescription drug or device to a prisoner or detainee, (b) the proper storage and protection of the drug or device consistent with the directions contained on the label or written drug information provided by the pharmacist for the drug or device, (c) limits on quantity to be dispensed, (d) transferability of drugs or devices for prisoners or detainees between facilities, (e) container requirements, (f) establishment of a drug formulary, and (g) fees for the pharmacy to accept the returned drug or device.

(5) Any person or entity which exercises reasonable care in accepting, distributing, or dispensing prescription drugs or devices under this section or rules and regulations adopted and promulgated under this section shall be immune from civil or criminal liability or professional disciplinary action of any kind for any injury, death, or loss to person or property relating to such activities.

Source: Laws 2009, LB288, § 46; Laws 2011, LB274, § 2.

(I) PRESCRIPTION DRUG MONITORING PROGRAM

71-2454 Prescription drug monitoring; legislative intent.

It is the intent of the Legislature that an entity described in section 71-2455 establish a system of prescription drug monitoring for the purposes of (1) preventing the misuse of controlled substances that are prescribed in an efficient and cost-effective manner and (2) allowing doctors and pharmacists to monitor the care and treatment of patients for whom such a prescription drug is prescribed to ensure that such prescription drugs are used for medically appropriate purposes and that the State of Nebraska remains on the cutting edge of medical information technology.

Source: Laws 2011, LB237, § 1; Laws 2014, LB1072, § 1.
Effective date July 18, 2014.

71-2455 Prescription drug monitoring; Department of Health and Human Services; duties; powers.

The Department of Health and Human Services, in collaboration with the Nebraska Health Information Initiative or any successor public-private state-wide health information exchange, shall enhance or establish technology for prescription drug monitoring to carry out the purposes of section 71-2454. The

department may use state funds and accept grants, gifts, or other funds in order to implement and operate the technology. The department may adopt and promulgate rules and regulations to authorize use of electronic health information, if necessary to carry out the purposes of sections 71-2454 and 71-2455.

Source: Laws 2011, LB237, § 2; Laws 2014, LB1072, § 2.
Effective date July 18, 2014.

71-2456 Prescription Drug Monitoring Program Fund; created; investment.

The Prescription Drug Monitoring Program Fund is created. The Department of Health and Human Services shall administer the fund which shall include any state funds, grants, or gifts received by the department for the purposes of carrying out the purposes of sections 71-2454 and 71-2455. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2014, LB1072, § 3.
Effective date July 18, 2014.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 25

POISONS

(b) LEAD POISONING

Section

71-2516. Department of Health and Human Services; statewide environmental lead hazard awareness action plan; powers.

(c) LEAD POISONING PREVENTION PROGRAM

71-2518. Lead poisoning prevention program; established; components; results of tests; reports required; department; reports; payment of costs.

(b) LEAD POISONING

71-2516 Department of Health and Human Services; statewide environmental lead hazard awareness action plan; powers.

The Department of Health and Human Services may participate in national efforts and may develop a statewide environmental lead hazard awareness action plan which is comprehensive in scope and reflects contributions from a broad base of providers and consumers. In order to implement the statewide environmental lead hazard awareness action plan, the department may:

(1) Actively seek the participation and commitment of the public, health care professionals and facilities, the educational community, and community organizations in a comprehensive program to ensure that the state's children are appropriately protected from environmental lead hazards;

(2) Apply for and receive public and private awards to develop and administer a statewide comprehensive environmental lead hazard awareness action plan program;

(3) Provide environmental lead hazard information and education to the public, parents, health care providers, and educators to establish and maintain a high level of awareness;

(4) Assist parents, health care providers, and communities in developing systems, including demonstration and pilot projects, which emphasize the protection of children from environmental lead poisoning and the use of private practitioners; and

(5) Evaluate the effectiveness of these statewide efforts, identify children at special risk for environmental lead hazard exposure, and report electronically on the activities of the statewide program annually to the Legislature and the citizens of Nebraska.

Source: Laws 1993, LB 536, § 17; Laws 1996, LB 1044, § 630; Laws 2012, LB782, § 115.

(c) LEAD POISONING PREVENTION PROGRAM

71-2518 Lead poisoning prevention program; established; components; results of tests; reports required; department; reports; payment of costs.

(1) The Division of Public Health of the Department of Health and Human Services shall establish a lead poisoning prevention program that has the following components:

(a) A coordinated plan to prevent childhood lead poisoning and to minimize exposure of the general public to lead-based paint hazards. Such plan shall:

(i) Provide a standard, stated in terms of micrograms of lead per deciliter of whole blood, to be used in identifying elevated blood-lead levels;

(ii) Require that a child be tested for an elevated blood-lead level in accordance with the medicaid state plan as defined in section 68-907 if the child is a participant in the medical assistance program established pursuant to the Medical Assistance Act; and

(iii) Recommend that a child be tested for elevated blood-lead levels if the child resides in a zip code with a high prevalence of children with elevated blood-lead levels as demonstrated by previous testing data or if the child meets one of the criteria included in a lead poisoning prevention screening questionnaire developed by the department; and

(b) An educational and community outreach plan regarding lead poisoning prevention that shall, at a minimum, include the development of appropriate educational materials targeted to health care providers, child care providers, public school personnel, owners and tenants of residential dwellings, and parents of young children. Such educational materials shall be made available to the general public via the department's web site.

(2) The results of all blood-lead level tests conducted in Nebraska shall be reported to the department. When the department receives notice of a child with an elevated blood-lead level as stated in the plan required pursuant to subdivision (1)(a) of this section, it shall initiate contact with the local public health department or the physician, or both, of such child and offer technical assistance, if necessary.

(3) The department shall report electronically to the Legislature by January 1, 2013, and each January 1 thereafter, the number of children from birth through age six who were screened for elevated blood-lead levels during the preceding fiscal year and who were confirmed to have elevated blood-lead levels as stated in the plan required pursuant to subdivision (1)(a) of this section. The report

shall compare such results with those of previous fiscal years and shall identify any revisions to the plan required by subdivision (1)(a) of this section.

(4) This section does not require the department to pay the cost of elevated-blood-lead-level testing in accordance with this section except in cases described in subdivision (1)(a)(ii) of this section.

Source: Laws 2012, LB1038, § 1; Laws 2013, LB222, § 27.

Cross References

Medical Assistance Act, see section 68-901.

ARTICLE 30

NEBRASKA MENTAL HEALTH FIRST AID TRAINING

Section

- 71-3001. Act, how cited.
- 71-3002. Legislative findings.
- 71-3003. Terms, defined.
- 71-3004. Mental health first aid training program; Division of Behavioral Health of Department of Health and Human Services; duties.
- 71-3005. Efficacy of mental health first aid training program; behavioral health regions; report.
- 71-3006. Behavioral health regions; duties.
- 71-3007. Legislative intent.

71-3001 Act, how cited.

Sections 71-3001 to 71-3007 shall be known and may be cited as the Nebraska Mental Health First Aid Training Act.

Source: Laws 2014, LB901, § 2.
Effective date July 18, 2014.

71-3002 Legislative findings.

The Legislature finds that:

(1) National statistics show that one in four Americans will face a mental illness in his or her lifetime;

(2) Mental health first aid builds an understanding of how mental illness affects Nebraskans, provides an overview of common treatments, and teaches basic skills for providing assistance to a person who may be developing symptoms or experiencing a crisis;

(3) A mental health first aid program is an education program recognized on the Substance Abuse and Mental Health Services Administration's National Registry of Evidence-based Programs and Practices; and

(4) The Behavioral Health Education Center administered by the University of Nebraska Medical Center has conducted a series of mental health first aid training courses and the experience of providing such courses may be utilized regarding the implementation of a mental health first aid training program as prescribed by the Nebraska Mental Health First Aid Training Act.

Source: Laws 2014, LB901, § 3.
Effective date July 18, 2014.

71-3003 Terms, defined.

For purposes of the Nebraska Mental Health First Aid Training Act:

(1) Behavioral health regions means the behavioral health regions established pursuant to section 71-807; and

(2) Mental health first aid means the help provided to a person who is experiencing a mental health or substance abuse problem or in a mental health crisis before appropriate professional assistance or other supports are secured.

Source: Laws 2014, LB901, § 4.

Effective date July 18, 2014.

71-3004 Mental health first aid training program; Division of Behavioral Health of Department of Health and Human Services; duties.

(1) The Division of Behavioral Health of the Department of Health and Human Services shall establish a mental health first aid training program, using contracts through the behavioral health regions, to help the public identify and understand the signs of a mental illness or substance abuse problem or a mental health crisis and to provide the public with skills to help a person who is developing or experiencing a mental health or substance abuse problem or a mental health crisis and to de-escalate crisis situations if needed. The training program shall provide an interactive mental health first aid training course administered by the state's regional behavioral health authorities. Instructors in the training program shall be certified by a national authority for Mental Health First Aid USA or a similar organization. The training program shall work cooperatively with local entities to provide training for individuals to become instructors.

(2) The mental health first aid training program shall be designed to train individuals to accomplish the following objectives as deemed appropriate considering the trainee's age:

(a) Help the public identify, understand, and respond to the signs of mental illness and substance abuse;

(b) Emphasize the need to reduce the stigma of mental illness; and

(c) Assist a person who is believed to be developing or has developed a mental health or substance abuse problem or who is believed to be experiencing a mental health crisis.

Source: Laws 2014, LB901, § 5.

Effective date July 18, 2014.

71-3005 Efficacy of mental health first aid training program; behavioral health regions; report.

The Division of Behavioral Health of the Department of Health and Human Services shall ensure that evaluative criteria are established which measure the efficacy of the mental health first aid training program, including trainee feedback, with the objective of helping the public identify, understand, and respond to the signs of mental illness and alcohol and substance abuse. The behavioral health regions shall submit an aggregated annual report electronically to the Legislature on trainee demographics and outcomes of the established criteria.

Source: Laws 2014, LB901, § 6.

Effective date July 18, 2014.

71-3006 Behavioral health regions; duties.

The behavioral health regions shall offer services to and work with agencies and organizations, including, but not limited to, schools, universities, colleges, the State Department of Education, the Department of Veterans' Affairs, law enforcement agencies, and local health departments, to develop a program that offers grants to implement the Nebraska Mental Health First Aid Training Act in ways that are representative and inclusive with respect to the economic and cultural diversity of this state.

Source: Laws 2014, LB901, § 7.
Effective date July 18, 2014.

71-3007 Legislative intent.

It is the intent of the Legislature to appropriate one hundred thousand dollars annually to the Department of Health and Human Services to carry out the Nebraska Mental Health First Aid Training Act.

Source: Laws 2014, LB901, § 8.
Effective date July 18, 2014.

**ARTICLE 33
FLUORIDATION**

Section

71-3305. Political subdivision; fluoride added to water supply; exception; ordinance to prohibit addition of fluoride; ballot; vote.

71-3305 Political subdivision; fluoride added to water supply; exception; ordinance to prohibit addition of fluoride; ballot; vote.

(1) Except as otherwise provided in subsection (2) or (3) of this section, any city or village having a population of one thousand or more inhabitants shall add fluoride to the water supply for human consumption for such city or village as provided in the rules and regulations of the Department of Health and Human Services unless such water supply has sufficient amounts of naturally occurring fluoride as provided in such rules and regulations.

(2) Subsection (1) of this section does not apply if the voters of the city or village adopted an ordinance, after April 18, 2008, but before June 1, 2010, to prohibit the addition of fluoride to such water supply.

(3) If any city or village reaches a population of one thousand or more inhabitants after June 1, 2010, and is required to add fluoride to its water supply under subsection (1) of this section, the city or village may adopt an ordinance to prohibit the addition of fluoride to such water supply. The ordinance may be placed on the ballot by a majority vote of the governing body of the city or village or by initiative pursuant to sections 18-2501 to 18-2538. Such proposed ordinance shall be voted upon at the next statewide general election after the population of the city or village reaches one thousand or more inhabitants.

(4) Any rural water district organized under sections 46-1001 to 46-1020 that supplies water for human consumption to any city or village which is required to add fluoride to such water supply under this section shall not be responsible for any costs, equipment, testing, or maintenance related to such fluoridation

unless such district has agreed with the city or village to assume such responsibilities.

Source: Laws 1973, LB 449, § 1; Laws 1975, LB 245, § 2; Laws 1982, LB 807, § 45; Laws 1996, LB 1044, § 644; Laws 2007, LB296, § 559; Laws 2008, LB245, § 1; Laws 2011, LB36, § 1.

ARTICLE 34

REDUCTION IN MORBIDITY AND MORTALITY

(b) CHILD AND MATERNAL DEATHS

Section

- 71-3404. Act, how cited; child deaths; maternal deaths; legislative findings and intent.
- 71-3405. Terms, defined.
- 71-3406. State Child and Maternal Death Review Team; core members; terms; chairperson; not considered public body; meetings; expenses.
- 71-3407. Team; purposes; duties.
- 71-3408. Chairperson; team coordinator; duties.
- 71-3409. Review of child deaths; review of maternal deaths; manner.
- 71-3410. Provision of information and records; subpoenas.
- 71-3411. Information and records; confidentiality; release; conditions; disclosure; limitations.

(b) CHILD AND MATERNAL DEATHS

71-3404 Act, how cited; child deaths; maternal deaths; legislative findings and intent.

(1) Sections 71-3404 to 71-3411 shall be known and may be cited as the Child and Maternal Death Review Act.

(2) The Legislature finds and declares that it is in the best interests of the state, its residents, and especially the children of this state that the number and causes of death of children in this state be examined. There is a need for a comprehensive integrated review of all child deaths in Nebraska and a system for statewide retrospective review of existing records relating to each child death.

(3) The Legislature further finds and declares that it is in the best interests of the state and its residents that the number and causes of maternal death in this state be examined. There is a need for a comprehensive integrated review of all maternal deaths in Nebraska and a system for statewide retrospective review of existing records relating to each maternal death.

(4) It is the intent of the Legislature, by creation of the Child and Maternal Death Review Act, to:

(a) Identify trends from the review of past records to prevent future child and maternal deaths from similar causes when applicable;

(b) Recommend systematic changes for the creation of a cohesive method for responding to certain child and maternal deaths; and

(c) When appropriate, cause referral to be made to those agencies as required in section 28-711 or as otherwise required by state law.

Source: Laws 1993, LB 431, § 1; Laws 2013, LB361, § 1.

71-3405 Terms, defined.

For purposes of the Child and Maternal Death Review Act:

(1) Child means a person from birth to eighteen years of age;

(2) Investigation of child death means a review of existing records and other information regarding the child from relevant agencies, professionals, and providers of medical, dental, prenatal, and mental health care. The records to be reviewed may include, but not be limited to, medical records, coroner's reports, autopsy reports, social services records, records of alternative response cases under alternative response demonstration projects implemented in accordance with sections 28-710.01, 28-712, and 28-712.01, educational records, emergency and paramedic records, and law enforcement reports;

(3) Investigation of maternal death means a review of existing records and other information regarding the woman from relevant agencies, professionals, and providers of medical, dental, prenatal, and mental health care. The records to be reviewed may include, but not be limited to, medical records, coroner's reports, autopsy reports, social services records, educational records, emergency and paramedic records, and law enforcement reports;

(4) Maternal death means the death of a woman during pregnancy or the death of a postpartum woman;

(5) Postpartum woman means a woman during the period of time beginning when the woman ceases to be pregnant and ending one year after the woman ceases to be pregnant;

(6) Preventable child or maternal death means the death of any child or pregnant or postpartum woman which reasonable medical, social, legal, psychological, or educational intervention may have prevented. Preventable child or maternal death includes, but is not limited to, the death of a child or pregnant or postpartum woman from (a) intentional and unintentional injuries, (b) medical misadventures, including untoward results, malpractice, and foreseeable complications, (c) lack of access to medical care, (d) neglect and reckless conduct, including failure to supervise and failure to seek medical care for various reasons, and (e) preventable premature birth;

(7) Reasonable means taking into consideration the condition, circumstances, and resources available; and

(8) Team means the State Child and Maternal Death Review Team.

Source: Laws 1993, LB 431, § 2; Laws 2013, LB361, § 2; Laws 2014, LB853, § 46.

Effective date July 18, 2014.

71-3406 State Child and Maternal 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 twelve and a maximum of fifteen members to the State Child and Maternal 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, (e) the Inspector General of Nebraska Child Welfare, and (f) 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 repre-

sent hospitals or physicians. The department shall be responsible for the general administration of the activities of the team and shall employ or contract with a team coordinator to provide administrative support for the team.

(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; Laws 2013, LB269, § 12; Laws 2013, LB361, § 3.

Cross References

Open Meetings Act, see section 84-1407.

71-3407 Team; purposes; duties.

(1) The purposes of the team shall be to (a) develop an understanding of the causes and incidence of child or maternal deaths in this state, (b) develop recommendations for changes within relevant agencies and organizations which may serve to prevent child or maternal deaths, and (c) advise the Governor, the Legislature, and the public on changes to law, policy, and practice which will prevent child or maternal deaths.

(2) The team shall:

(a) Undertake annual statistical studies of the causes and incidence of child or maternal deaths in this state. The studies shall include, but not be limited to, an analysis of the records of community, public, and private agency involvement with the children, the pregnant or postpartum women, and their families prior to and subsequent to the child or maternal deaths;

(b) Develop a protocol for retrospective investigation of child or maternal deaths by the team;

(c) Develop a protocol for collection of data regarding child or maternal deaths by the team;

(d) Consider training needs, including cross-agency training, and service gaps;

(e) Include in its annual report recommended changes to any law, rule, regulation, or policy needed to decrease the incidence of preventable child or maternal deaths;

(f) Educate the public regarding the incidence and causes of child or maternal deaths, the public role in preventing child or maternal deaths, and specific steps the public can undertake to prevent child or maternal deaths. The team may enlist the support of civic, philanthropic, and public service organizations in the performance of its educational duties;

(g) Provide the Governor, the Legislature, and the public with annual reports which shall include the team's findings and recommendations for each of its duties. For 2013 and 2014, the team shall also provide the report to the Health

and Human Services Committee of the Legislature on or before September 15. The reports submitted to the Legislature shall be submitted electronically; and

(h) When appropriate, make referrals to those agencies as required in section 28-711 or as otherwise required by state law.

(3) The team may enter into consultation agreements with relevant experts to evaluate the information and records collected by the team. All of the confidentiality provisions of section 71-3411 shall apply to the activities of a consulting expert.

(4) The team may enter into agreements with a local public health department as defined in section 71-1626 to act as the agent of the team in conducting all information gathering and investigation necessary for the purposes of the Child and Maternal Death Review Act. All of the confidentiality provisions of section 71-3411 shall apply to the activities of the agent.

Source: Laws 1993, LB 431, § 4; Laws 2012, LB782, § 116; Laws 2012, LB1160, § 18; Laws 2013, LB361, § 4.

71-3408 Chairperson; team coordinator; duties.

(1) The chairperson of the team shall:

(a) Chair meetings of the team; and

(b) Ensure identification of strategies to prevent child or maternal deaths.

(2) The team coordinator provided under subsection (1) of section 71-3406 shall:

(a) Have the necessary information from investigative reports, medical records, coroner's reports, autopsy reports, educational records, and other relevant items made available to the team;

(b) Ensure timely notification of the team members of an upcoming meeting;

(c) Ensure that all team reporting and data-collection requirements are met;

(d) Oversee adherence to the review process established by the Child and Maternal Death Review Act; and

(e) Perform such other duties as the team deems appropriate.

Source: Laws 1993, LB 431, § 5; Laws 2013, LB361, § 5.

71-3409 Review of child deaths; review of maternal deaths; manner.

(1)(a) The team shall review all child deaths occurring on or after January 1, 1993, and before January 1, 2014, in three phases as provided in this subsection.

(b) Phase one shall be conducted by the core members. The core members shall review the death certificate, birth certificate, coroner's report or autopsy report if done, and indicators of child or family involvement with the Department of Health and Human Services. The core members shall classify the nature of the death, whether accidental, homicide, suicide, undetermined, or natural causes, determine the completeness of the death certificate, and identify discrepancies and inconsistencies. The core members may select cases from phase one for review in phase two.

(c) Phase two shall be completed by the core members and shall not be conducted on any child death under active investigation by a law enforcement agency or under criminal prosecution. The core members may seek additional

records described in section 71-3410. The core members shall identify the preventability of death, the possibility of child abuse or neglect, the medical care issues of access and adequacy, and the nature and extent of interagency communication. The core members may select cases from phase two for review by the team in phase three.

(d) Phase three shall be a review by the team of those cases selected by the core members for further discussion, review, and analysis.

(2)(a) The team shall review all child deaths occurring on or after January 1, 2014, in the manner provided in this subsection.

(b) The members shall review the death certificate, birth certificate, coroner's report or autopsy report if done, and indicators of child or family involvement with the department. The members shall classify the nature of the death, whether accidental, homicide, suicide, undetermined, or natural causes, determine the completeness of the death certificate, and identify discrepancies and inconsistencies.

(c) A review shall not be conducted on any child death under active investigation by a law enforcement agency or under criminal prosecution. The members may seek records described in section 71-3410. The members shall identify the preventability of death, the possibility of child abuse or neglect, the medical care issues of access and adequacy, and the nature and extent of interagency communication.

(3)(a) The team shall review all maternal deaths occurring on or after January 1, 2014, in the manner provided in this subsection.

(b) The members shall review the death certificate, coroner's report or autopsy report if done, and indicators of the woman's involvement with the department. The members shall classify the nature of the death, whether accidental, homicide, suicide, undetermined, or natural causes, determine the completeness of the death certificate, and identify discrepancies and inconsistencies.

(c) A review shall not be conducted on any maternal death under active investigation by a law enforcement agency or under criminal prosecution. The members may seek records described in section 71-3410. The members shall identify the preventability of death, the possibility of domestic abuse, the medical care issues of access and adequacy, and the nature and extent of interagency communication.

Source: Laws 1993, LB 431, § 6; Laws 1996, LB 1044, § 649; Laws 2013, LB361, § 6.

71-3410 Provision of information and records; subpoenas.

(1) Upon request, the team shall be immediately provided:

(a) 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

(b) All information and records maintained by any agency of state, county, or local government, any other political subdivision, any school district, or any public or private educational institution, including, but not limited to, birth and death certificates, law enforcement investigative data and reports, coroner investigative data and reports, educational records, parole and probation information and records, and information and records of any social services agency

that provided services to the child, the pregnant or postpartum woman, or the family of the child or woman.

(2) 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)(a) and (b) of this section, except records and information on any child or maternal 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; Laws 2013, LB361, § 7.

71-3411 Information and records; confidentiality; release; conditions; disclosure; limitations.

(1)(a) All information and records acquired by the team in the exercise of its purposes and duties pursuant to the Child and Maternal Death Review Act shall be confidential and exempt from disclosure and may only be disclosed as provided in this section and as provided in section 71-3407. Statistical compilations of data made by the team which do not contain any information that would permit the identification of any person to be ascertained shall be public records.

(b) De-identified information and records obtained by the team may be released to a researcher, upon proof of identity and qualifications of the researcher, if the researcher is employed by a research organization, university, institution, or government agency and is conducting scientific, medical, or public health research and if there is no publication or disclosure of any name or facts that could lead to the identity of any person included in the information or records. Such release shall provide for a written agreement with the Department of Health and Human Services providing protection of the security of the content of the information, including access limitations, storage of the information, destruction of the information, and use of the information. The release of such information pursuant to this subdivision shall not make otherwise confidential information a public record.

(c) De-identified information and records obtained by the team may be released to the United States Public Health Service or its successor, a government health agency, or a local public health department as defined in section 71-1626 if there is no publication or disclosure of any name or facts that could lead to the identity of any person included in the information or records. Such release shall provide for protection of the security of the content of the information, including access limitations, storage of the information, destruction of the information, and use of the information. The release of such information pursuant to this subdivision shall not make otherwise confidential information a public record.

(2) Except as necessary to carry out a team's purposes and duties, members of a team and persons attending a team meeting may not disclose what transpired at a meeting and shall not disclose any information the disclosure of which is prohibited by this section.

(3) Members of a team and persons attending a team meeting shall not testify in any civil, administrative, licensure, or criminal proceeding, including depositions, regarding information reviewed in or opinions formed as a result of a

team meeting. This subsection shall not be construed to prevent a person from testifying to information obtained independently of the team or which is public information.

(4) Information, documents, and records of the team shall not be subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that information, documents, and records otherwise available from other sources shall not be immune from subpoena, discovery, or introduction into evidence through those sources solely because they were presented during proceedings of the team or are maintained by the team.

Source: Laws 1993, LB 431, § 8; Laws 2013, LB361, § 8.

ARTICLE 35

RADIATION CONTROL AND RADIOACTIVE WASTE

(a) RADIATION CONTROL ACT

Section

71-3503. Terms, defined.

71-3513.01. Repealed. Laws 2014, LB 659, § 1.

(a) RADIATION CONTROL ACT

71-3503 Terms, defined.

For purposes of the Radiation Control Act, unless the context otherwise requires:

(1) Radiation means ionizing radiation and nonionizing radiation as follows:

(a) Ionizing radiation means gamma rays, X-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other atomic or nuclear particles or rays but does not include sound or radio waves or visible, infrared, or ultraviolet light; and

(b) Nonionizing radiation means (i) any electromagnetic radiation which can be generated during the operations of electronic products to such energy density levels as to present a biological hazard to occupational and public health and safety and the environment, other than ionizing electromagnetic radiation, and (ii) any sonic, ultrasonic, or infrasonic waves which are emitted from an electronic product as a result of the operation of an electronic circuit in such product and to such energy density levels as to present a biological hazard to occupational and public health and safety and the environment;

(2) Radioactive material means any material, whether solid, liquid, or gas, which emits ionizing radiation spontaneously. Radioactive material includes, but is not limited to, accelerator-produced material, byproduct material, naturally occurring material, source material, and special nuclear material;

(3) Radiation-generating equipment means any manufactured product or device, component part of such a product or device, or machine or system which during operation can generate or emit radiation except devices which emit radiation only from radioactive material;

(4) Sources of radiation means any radioactive material, any radiation-generating equipment, or any device or equipment emitting or capable of emitting radiation or radioactive material;

(5) Undesirable radiation means radiation in such quantity and under such circumstances as determined from time to time by rules and regulations adopted and promulgated by the department;

(6) Person means any individual, corporation, partnership, limited liability company, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing;

(7) Registration means registration with the department pursuant to the Radiation Control Act;

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

(9) Administrator means the administrator of radiation control designated pursuant to section 71-3504;

(10) Electronic product means any manufactured product, device, assembly, or assemblies of such products or devices which, during operation in an electronic circuit, can generate or emit a physical field of radiation;

(11) License means:

(a) A general license issued pursuant to rules and regulations adopted and promulgated by the department without the filing of an application with the department or the issuance of licensing documents to particular persons to transfer, acquire, own, possess, or use quantities of or devices or equipment utilizing radioactive materials;

(b) A specific license, issued to a named person upon application filed with the department pursuant to the Radiation Control Act and rules and regulations adopted and promulgated pursuant to the act, to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment utilizing radioactive materials; or

(c) A license issued to a radon measurement specialist, radon mitigation specialist, radon measurement business, or radon mitigation business;

(12) Byproduct material means:

(a) Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(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;

(c)(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity; or

(ii) Any material that (A) has been made radioactive by use of a particle accelerator and (B) is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity; and

(d) Any discrete source of naturally occurring radioactive material, other than source material, that:

(i) The United States Nuclear Regulatory Commission, in consultation with the Administrator of the United States Environmental Protection Agency, the

United States Secretary of Energy, the United States Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Is extracted or converted after extraction for use in a commercial, medical, or research activity;

(13) Source material means:

(a) Uranium or thorium or any combination thereof in any physical or chemical form; or

(b) Ores which contain by weight one-twentieth of one percent or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material;

(14) Special nuclear material means:

(a) Plutonium, uranium 233, or uranium enriched in the isotope 233 or in the isotope 235 and any other material that the United States Nuclear Regulatory Commission pursuant to the provisions of section 51 of the federal Atomic Energy Act of 1954, as amended, determines to be special nuclear material but does not include source material; or

(b) Any material artificially enriched by any material listed in subdivision (14)(a) of this section but does not include source material;

(15) Users of sources of radiation means:

(a) Physicians using radioactive material or radiation-generating equipment for human use;

(b) Natural persons using radioactive material or radiation-generating equipment for education, research, or development purposes;

(c) Natural persons using radioactive material or radiation-generating equipment for manufacture or distribution purposes;

(d) Natural persons using radioactive material or radiation-generating equipment for industrial purposes; and

(e) Natural persons using radioactive material or radiation-generating equipment for any other similar purpose;

(16) Civil penalty means any monetary penalty levied on a licensee or registrant because of violations of statutes, rules, regulations, licenses, or registration certificates but does not include criminal penalties;

(17) Closure means all activities performed at a waste handling, processing, management, or disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custodial care, surveillance, and monitoring are necessary at the site following termination of licensed operation;

(18) Decommissioning means final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for postoperational care;

(19) Disposal means the permanent isolation of low-level radioactive waste pursuant to the Radiation Control Act and rules and regulations adopted and promulgated pursuant to such act;

(20) Generate means to produce low-level radioactive waste when used in relation to low-level radioactive waste;

(21) High-level radioactive waste means:

(a) Irradiated reactor fuel;

(b) Liquid wastes resulting from the operation of the first cycle solvent extraction system or equivalent and the concentrated wastes from subsequent extraction cycles or the equivalent in a facility for reprocessing irradiated reactor fuel; and

(c) Solids into which such liquid wastes have been converted;

(22) Low-level radioactive waste means radioactive waste not defined as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in subdivision (12)(b) of this section;

(23) Management of low-level radioactive waste means the handling, processing, storage, reduction in volume, disposal, or isolation of such waste from the biosphere in any manner;

(24) Source material mill tailings or mill tailings means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from underground solution extraction processes, but not including underground ore bodies depleted by such solution extraction processes;

(25) Source material milling means any processing of ore, including underground solution extraction of unmined ore, primarily for the purpose of extracting or concentrating uranium or thorium therefrom and which results in the production of source material and source material mill tailings;

(26) Spent nuclear fuel means irradiated nuclear fuel that has undergone at least one year of decay since being used as a source of energy in a power reactor. Spent nuclear fuel includes the special nuclear material, byproduct material, source material, and other radioactive material associated with fuel assemblies;

(27) Transuranic waste means radioactive waste material containing alpha-emitting radioactive elements, with radioactive half-lives greater than five years, having an atomic number greater than 92 in concentrations in excess of one hundred nanocuries per gram;

(28) Licensed practitioner means a person licensed to practice medicine, dentistry, podiatry, chiropractic, osteopathic medicine and surgery, or as an osteopathic physician;

(29) X-ray system means an assemblage of components for the controlled production of X-rays, including, but not limited to, an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system;

(30) Licensed facility operator means any person or entity who has obtained a license under the Low-Level Radioactive Waste Disposal Act to operate a facility, including any person or entity to whom an assignment of a license is approved by the Department of Environmental Quality; and

(31) Deliberate misconduct means an intentional act or omission by a person that (a) would intentionally cause a licensee, registrant, or applicant for a

license or registration to be in violation of any rule, regulation, or order of or any term, condition, or limitation of any license or registration issued by the department under the Radiation Control Act or (b) constitutes an intentional violation of a requirement, procedure, instruction, contract, purchase order, or policy under the Radiation Control Act by a licensee, a registrant, an applicant for a license or registration, or a contractor or subcontractor of a licensee, registrant, or applicant for a license or registration.

Source: Laws 1963, c. 406, § 3, p. 1297; Laws 1975, LB 157, § 3; Laws 1978, LB 814, § 3; Laws 1984, LB 716, § 3; Laws 1987, LB 390, § 4; Laws 1989, LB 342, § 32; Laws 1990, LB 1064, § 17; Laws 1993, LB 121, § 434; Laws 1993, LB 536, § 83; Laws 1995, LB 406, § 42; Laws 1996, LB 1044, § 651; Laws 1996, LB 1201, § 1; Laws 2002, LB 93, § 12; Laws 2002, LB 1021, § 71; Laws 2005, LB 301, § 42; Laws 2006, LB 994, § 103; Laws 2007, LB296 § 566; Laws 2007, LB463, § 1209; Laws 2008, LB928, § 23; Laws 2012, LB794, § 1.

Cross References

Low-Level Radioactive Waste Disposal Act, see section 81-1578.

71-3513.01 Repealed. Laws 2014, LB 659, § 1.

ARTICLE 39

INDOOR TANNING FACILITY ACT

Section

- 71-3901. Act, how cited.
- 71-3902. Terms, defined.
- 71-3903. Legislative intent.
- 71-3904. Applicability of act.
- 71-3905. Operator, owner, or lessee; prohibited acts; signed statement required; when; consent; proof of age; duties.
- 71-3906. Operator, owner, or lessee; civil penalty.
- 71-3907. Operator, owner, or lessee; post warning sign; information.
- 71-3908. Operator, owner, or lessee; ensure compliance.
- 71-3909. Complaint; department; powers.

71-3901 Act, how cited.

Sections 71-3901 to 71-3909 shall be known and may be cited as the Indoor Tanning Facility Act.

Source: Laws 2014, LB132, § 1.
Effective date July 18, 2014.

71-3902 Terms, defined.

For purposes of the Indoor Tanning Facility Act:

(1) Board means the Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art;

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

(3) Operator means a person designated by the tanning facility owner or tanning equipment lessee to operate, or to assist and instruct in the operation and use of, the tanning facility or tanning equipment;

(4) Tanning equipment means any device that emits electromagnetic radiation with wavelengths in the air between two hundred nanometers and four hundred nanometers and that is used for tanning of the skin. Tanning equipment includes, but is not limited to, a sunlamp, tanning booth, or tanning bed; and

(5) Tanning facility means a location, place, area, structure, or business that provides access to tanning equipment. Tanning facility includes, but is not limited to, any tanning business, salon, health club, apartment, or condominium, which has tanning equipment that is made available for public or commercial use, regardless of whether a fee is charged for access to the tanning equipment.

Source: Laws 2014, LB132, § 2.

Effective date July 18, 2014.

71-3903 Legislative intent.

It is the intent of the Legislature that the Indoor Tanning Facility Act be implemented and enforced in a manner that ensures equal treatment of all tanning facilities regardless of the type of business or facility or number of pieces of tanning equipment at the tanning facility.

Source: Laws 2014, LB132, § 3.

Effective date July 18, 2014.

71-3904 Applicability of act.

The Indoor Tanning Facility Act does not apply to:

(1) A physician licensed under the Uniform Credentialing Act who uses, in the practice of medicine, medical diagnostic and therapeutic equipment that emits ultraviolet radiation; or

(2) Any individual who owns tanning equipment exclusively for personal, noncommercial use.

Source: Laws 2014, LB132, § 4.

Effective date July 18, 2014.

Cross References

Uniform Credentialing Act, see section 38-101.

71-3905 Operator, owner, or lessee; prohibited acts; signed statement required; when; consent; proof of age; duties.

It shall be unlawful for an operator, an owner of a tanning facility, or a lessee of a tanning facility to allow any person less than sixteen years of age to use tanning equipment at the tanning facility unless the person is accompanied by a parent or legal guardian. Before each use of tanning equipment by any person less than sixteen years of age, the operator, owner, or lessee shall secure a statement signed at the tanning facility by the minor's parent or legal guardian stating that the person signing the statement is the minor's parent or legal guardian, that the parent or legal guardian has read and understood the warnings given by the tanning facility, that the parent or legal guardian consents to the minor's use of tanning equipment, and that the parent or legal guardian agrees that the minor will use protective eyewear while using the tanning equipment. The operator, owner, or lessee shall require proof of age from each person before allowing the person access to tanning equipment. For

purposes of this section, proof of age shall include, but not be limited to, a driver's license or other government-issued identification containing the person's date of birth and photograph or digital image.

Source: Laws 2014, LB132, § 5.
Effective date July 18, 2014.

71-3906 Operator, owner, or lessee; civil penalty.

Any operator, owner of a tanning facility, or lessee of a tanning facility who allows any person less than sixteen years of age to use tanning equipment at the tanning facility without being accompanied by the parent or legal guardian who signed the statement required under section 71-3905 shall be subject to a civil penalty of one hundred dollars to be imposed and collected by the department. The department shall remit the civil penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2014, LB132, § 6.
Effective date July 18, 2014.

71-3907 Operator, owner, or lessee; post warning sign; information.

(1) An operator, an owner of a tanning facility, or a lessee of a tanning facility shall post a warning sign in a conspicuous location in the tanning facility where it is readily visible by any person entering the tanning facility. The warning sign shall have black letters which are at least one-fourth inch in height.

(2) The warning sign shall include the following information:

DANGER — Ultraviolet Radiation

Follow instructions.

Avoid overexposure. As with natural sunlight, overexposure can cause eye and skin injuries and allergic reactions. Repeated exposure may cause premature aging of the skin and skin cancer.

WEAR PROTECTIVE EYEWEAR — Failure to do so may result in severe burns or long-term injury to eyes.

Medicines or cosmetics can increase your sensitivity to ultraviolet radiation. Consult your physician before using sunlamps if you are using medication or have a history of skin problems or believe yourself to be especially sensitive to sunlight. If you do not tan in the sun, you are unlikely to tan from the use of tanning equipment.

It is unlawful for a tanning facility to allow a person under sixteen years of age to use tanning equipment without being accompanied by the person's parent or legal guardian.

Any person may report a violation of the Indoor Tanning Facility Act to the Department of Health and Human Services.

Source: Laws 2014, LB132, § 7.
Effective date July 18, 2014.

71-3908 Operator, owner, or lessee; ensure compliance.

An operator, an owner of a tanning facility, or a lessee of a tanning facility shall ensure that the tanning facility complies with all applicable federal laws and regulations and the Indoor Tanning Facility Act.

Source: Laws 2014, LB132, § 8.
Effective date July 18, 2014.

71-3909 Complaint; department; powers.

Upon receipt of a complaint regarding a tanning facility, the department, with the recommendation of the board, may inspect any tanning facility during the hours of operation of the tanning facility to ensure compliance with the Indoor Tanning Facility Act.

Source: Laws 2014, LB132, § 9.
Effective date July 18, 2014.

ARTICLE 46

**MANUFACTURED HOMES, RECREATIONAL VEHICLES,
AND MOBILE HOME PARKS**

(a) MANUFACTURED HOMES AND RECREATIONAL VEHICLES

Section

- 71-4603. Terms, defined.
71-4604.01. Manufactured home or recreational vehicle; seals certifying compliance with standards; exemption; rules and regulations; fees; Public Service Commission Housing and Recreational Vehicle Cash Fund.
71-4609. Commission; duties; rules and regulations; refusal to issue seal; grounds; hearing; appeal; commission; powers; disciplinary actions; fee.

(a) MANUFACTURED HOMES AND RECREATIONAL VEHICLES

71-4603 Terms, defined.

For purposes of the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, unless the context otherwise requires:

(1) Camping trailer means a vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use;

(2) Commission means the Public Service Commission;

(3) Dealer means a person licensed by the state pursuant to the Motor Vehicle Industry Regulation Act as a dealer in manufactured homes or recreational vehicles or any other person, other than a manufacturer, who sells, offers to sell, distributes, or leases manufactured homes or recreational vehicles primarily to persons who in good faith purchase or lease a manufactured home or recreational vehicle for purposes other than resale;

(4) Defect means a failure to conform to an applicable construction standard that renders the manufactured home or recreational vehicle or any component of the manufactured home or recreational vehicle not fit for the ordinary use for which it was intended but does not result in an unreasonable risk of injury or death to occupants;

(5) Distributor means any person engaged in the sale and distribution of manufactured homes or recreational vehicles for resale;

(6) Failure to conform means a defect, a serious defect, noncompliance, or an imminent safety hazard related to the code;

(7) Fifth-wheel trailer means a unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of such size or weight as not to require a special highway movement permit, of gross trailer area not to exceed four hundred thirty square feet in the setup mode, and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle;

(8) Gross trailer area means the total plan area measured on the exterior to the maximum horizontal projections of exterior wall in the setup mode and includes all siding, corner trims, moldings, storage spaces, expandable room sections regardless of height, and areas enclosed by windows but does not include roof overhangs. Storage lofts contained within the basic unit shall have ceiling heights less than five feet and shall not constitute additional square footage. Appurtenances, as defined in subdivision (2)(k) of section 60-6,288, shall not be considered in calculating the gross trailer area as provided in such subdivision;

(9) Imminent safety hazard means a hazard that presents an imminent and unreasonable risk of death or severe personal injury;

(10) Manufactured home means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or forty body feet or more in length or when erected on site is three hundred twenty or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure, except that manufactured home includes any structure that meets all of the requirements of this subdivision other than the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, as such act existed on September 1, 2001, 42 U.S.C. 5401 et seq.;

(11) Manufactured-home construction means all activities relating to the assembly and manufacture of a manufactured home, including, but not limited to, activities relating to durability, quality, and safety;

(12) Manufactured-home safety means the performance of a manufactured home in such a manner that the public is protected against any unreasonable risk of the occurrence of accidents due to the design or construction of such manufactured home or any unreasonable risk of death or injury to the user or to the public if such accidents do occur;

(13) Manufacturer means any person engaged in manufacturing, assembling, or completing manufactured homes or recreational vehicles;

(14) Motor home means a vehicular unit primarily designed to provide temporary living quarters which are built into an integral part of, or permanently attached to, a self-propelled motor vehicle chassis or van, containing permanently installed independent life-support systems that meet the state standard for recreational vehicles and providing at least four of the following facilities: Cooking; refrigeration or ice box; self-contained toilet; heating, air conditioning, or both; a potable water supply system including a faucet and

sink; separate one-hundred-twenty-nominal-volt electrical power supply; or LP gas supply;

(15) Noncompliance means a failure to comply with an applicable construction standard that does not constitute a defect, a serious defect, or an imminent safety hazard;

(16) Park trailer means a vehicular unit which meets the following criteria:

(a) Built on a single chassis mounted on wheels;

(b) Designed to provide seasonal or temporary living quarters which may be connected to utilities necessary for operation of installed fixtures and appliances;

(c) Constructed to permit setup by persons without special skills using only hand tools which may include lifting, pulling, and supporting devices; and

(d) Having a gross trailer area not exceeding four hundred thirty square feet when in the setup mode;

(17) Person means any individual, partnership, limited liability company, company, corporation, or association engaged in manufacturing, selling, offering to sell, or leasing manufactured homes or recreational vehicles;

(18) Purchaser means the first person purchasing a manufactured home or recreational vehicle in good faith for purposes other than resale;

(19) Recreational vehicle means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which unit either has its own motive power or is mounted on or towed by another vehicle. Recreational vehicle includes, but is not limited to, travel trailer, park trailer, camping trailer, truck camper, motor home, and van conversion;

(20) Seal means a device or insignia issued by the Department of Health and Human Services Regulation and Licensure prior to May 1, 1998, or by the Public Service Commission on or after May 1, 1998, to be displayed on the exterior of a manufactured home or recreational vehicle to evidence compliance with state standards. The federal manufactured-home label shall be recognized as a seal;

(21) Serious defect means a failure to conform to an applicable construction standard that renders the manufactured home or recreational vehicle or any component of the manufactured home or recreational vehicle not fit for the ordinary use for which it was intended and which results in an unreasonable risk of injury or death to the occupants;

(22) Travel trailer means a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use of such size or weight as not to require special highway movement permits when towed by a motorized vehicle and of gross trailer area less than four hundred thirty square feet;

(23) Truck camper means a portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides and designed to be loaded onto and unloaded from the bed of a pickup truck; and

(24) Van conversion means a completed vehicle permanently altered cosmetically, structurally, or both which has been recertified by the state as a multipurpose passenger vehicle but which does not conform to or otherwise meet the definition of a motor home in this section and which contains at least one

plumbing, heating, or one-hundred-twenty-nominal-volt electrical component subject to the provisions of the state standard for recreational vehicles. Van conversion does not include any such vehicle that lacks any plumbing, heating, or one-hundred-twenty-nominal-volt electrical system but contains an extension of the low-voltage automotive circuitry.

Source: Laws 1969, c. 557, § 3, p. 2272; Laws 1975, LB 300, § 3; Laws 1985, LB 313, § 7; Laws 1993, LB 121, § 435; Laws 1993, LB 536, § 86; Laws 1996, LB 1044, § 675; Laws 1998, LB 1073, § 128; Laws 2001, LB 376, § 6; Laws 2008, LB797, § 13; Laws 2010, LB816, § 90; Laws 2012, LB751, § 48.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

71-4604.01 Manufactured home or recreational vehicle; seals certifying compliance with standards; exemption; rules and regulations; fees; Public Service Commission Housing and Recreational Vehicle Cash Fund.

(1)(a) Every manufactured home or recreational vehicle manufactured, sold, offered for sale, or leased in this state more than four months after May 27, 1975, and before May 1, 1998, shall comply with the seal requirements of the state agency responsible for regulation of manufactured homes or recreational vehicles as such requirements existed on the date of manufacture.

(b) Every manufactured home or recreational vehicle manufactured, sold, offered for sale, or leased in this state on or after May 1, 1998, shall bear a seal issued by the commission certifying that the body and frame design and construction and the plumbing, heating, and electrical systems of such manufactured home or recreational vehicle have been installed in compliance with the standards adopted by the commission, applicable at the time of manufacture. Manufactured homes destined for sale outside the United States shall be exempt from displaying the seal issued by the state if sufficient proof of such delivery is submitted to the commission for review. Recreational vehicles destined for sale or lease outside this state or the United States shall be exempt from displaying the seal issued by the state if sufficient proof of such delivery is submitted to the commission for review. The commission shall issue the recreational-vehicle seal upon an inspection of the plans and specifications for the recreational vehicle or upon an actual inspection of the recreational vehicle during or after construction if the recreational vehicle is in compliance with state standards. The commission shall issue the manufactured-home seal in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., as such act existed on January 1, 2005. Each seal issued by the state shall remain the property of the commission and may be revoked by the commission in the event of a violation of the conditions of issuance.

(2) The commission shall charge a fee in an amount determined annually by the commission after published notice and a hearing, for seals issued by the commission. A seal shall be placed on each manufactured home. The commission shall assess any costs of inspections conducted outside of Nebraska to the manufacturer in control of the inspected facility or to a manufacturer requesting such inspection. Such costs shall include, but not be limited to, actual travel, personnel, and inspection expenses and shall be paid prior to any issuance of seals.

(3) The commission shall adopt and promulgate rules and regulations governing the submission of plans and specifications of manufactured homes and recreational vehicles. A person who submits recreational-vehicle plans and specifications to the commission for review and approval shall be assessed an hourly rate by the commission for performing the review of the plans and specifications and related functions. The hourly rate shall be not less than fifteen dollars per hour and not more than seventy-five dollars per hour as determined annually by the commission after published notice and hearing based on the number of hours of review time as follows:

- (a) New model, one hour;
- (b) Quality control manual, two hours;
- (c) Typical, one-half hour;
- (d) Revisions, three-fourths hour;
- (e) Engineering calculations, three-fourths hour;
- (f) Initial package, fifteen hours; and
- (g) Yearly renewal, two hours plus the three-fourths hour for revisions.

(4) The commission shall charge each manufacturer an inspection fee of two hundred fifty dollars for each inspection of any new recreational vehicle manufactured by such manufacturer and not bearing a seal issued by the State of Nebraska or some reciprocal state.

(5) All fees collected pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles shall be remitted to the State Treasurer for credit to the Public Service Commission Housing and Recreational Vehicle Cash Fund.

Source: Laws 1975, LB 300, § 5; Laws 1983, LB 617, § 24; Laws 1985, LB 313, § 9; Laws 1991, LB 703, § 50; Laws 1993, LB 536, § 88; Laws 1996, LB 1044, § 677; Laws 1996, LB 1155, § 33; Laws 1998, LB 1073, § 130; Laws 2003, LB 241, § 2; Laws 2005, LB 319, § 1; Laws 2008, LB797, § 15; Laws 2010, LB849, § 26.

71-4609 Commission; duties; rules and regulations; refusal to issue seal; grounds; hearing; appeal; commission; powers; disciplinary actions; fee.

(1) The commission shall administer the Uniform Standard Code for Manufactured Homes and Recreational Vehicles. The commission may adopt and promulgate, amend, alter, or repeal general rules and regulations of procedure for (a) administering the provisions of the code, (b) issuing seals, (c) obtaining statistical data respecting the manufacture and sale of manufactured homes and recreational vehicles, and (d) prescribing means, methods, and practices to make effective such provisions.

(2) The commission shall refuse to issue a seal to any manufacturer or other person for any manufactured home or recreational vehicle found to be not in compliance with its standards governing body and frame design and construction or plumbing, heating, or electrical systems for manufactured homes or recreational vehicles or for which fees have not been paid. Except in case of failure to pay the required fees, any such manufacturer or other person may request a hearing before the commission on the issue of such refusal. Procedures for notice and opportunity for a hearing before the commission shall be

pursuant to the Administrative Procedure Act. The refusal by the commission may be appealed, and the appeal shall be in accordance with section 75-136.

(3) The issuance of seals may be suspended or revoked as to any manufacturer or other person who has not complied with any provision of the code or with any rule, regulation, or standard adopted and promulgated under the code or who is convicted of violating section 71-4608, and issuance of the seals shall not be resumed until such manufacturer or other person submits sufficient proof that the conditions which caused the lack of compliance or the violation have been remedied. Any manufacturer or other person may request a hearing before the commission on the issue of such suspension or revocation. Procedures for notice and opportunity for a hearing before the commission shall be pursuant to the Administrative Procedure Act. The suspension or revocation by the commission may be appealed, and the appeal shall be in accordance with section 75-136.

(4) The commission may conduct hearings and presentations of views consistent with the regulations adopted by the United States Department of Housing and Urban Development and adopt and promulgate such rules and regulations as are necessary to carry out this function.

(5) The commission shall establish a monitoring inspection fee in an amount approved by the United States Secretary of Housing and Urban Development, which fee shall be an amount paid to the commission by the manufacturer for each manufactured-home seal issued in the state. An additional monitoring inspection fee established by the United States Secretary of Housing and Urban Development shall be paid by the manufacturer to the secretary who shall distribute the fees collected from all manufactured-home manufacturers based on provisions developed and approved by the secretary.

Source: Laws 1969, c. 557, § 9, p. 2274; Laws 1975, LB 300, § 21; Laws 1981, LB 545, § 25; Laws 1985, LB 313, § 13; Laws 1988, LB 352, § 134; Laws 1993, LB 536, § 91; Laws 1998, LB 1073, § 133; Laws 2002, LB 93, § 16; Laws 2013, LB545, § 3.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 47

HEARING

(b) COMMISSION FOR THE DEAF AND HARD OF HEARING

Section

71-4728. Commission; purpose; duties.

71-4732. Commission for the Deaf and Hard of Hearing Fund; created; use; investment.

(c) INFANT HEARING ACT

71-4741. Hearing screening; department; duties.

(b) COMMISSION FOR THE DEAF AND HARD OF HEARING

71-4728 Commission; purpose; duties.

The commission shall serve as the principal state agency responsible for monitoring public policies and implementing programs which shall improve the quality and coordination of existing services for deaf or hard of hearing

persons and promote the development of new services when necessary. To perform this function the commission shall:

(1) Inventory services available for meeting the problems of persons with a hearing loss and assist such persons in locating and securing such services;

(2) License interpreters under sections 20-150 to 20-159 and prepare and maintain a roster of licensed interpreters. The roster shall include the type of employment the interpreter generally engages in, the type of license the interpreter holds, and the expiration date of the license. Each interpreter included on the roster shall provide the commission with his or her social security number which shall be kept confidential by the commission. The roster shall be made available to local, state, and federal agencies and shall be used for referrals to private organizations and individuals seeking interpreters;

(3) Promote the training of interpreters for deaf or hard of hearing persons;

(4) Provide counseling to deaf or hard of hearing persons or refer such persons to private or governmental agencies which provide counseling services;

(5) Conduct a voluntary census of deaf or hard of hearing persons in Nebraska and compile a current registry;

(6) Promote expanded adult educational opportunities for deaf or hard of hearing persons;

(7) Serve as an agency for the collection of information concerning deaf or hard of hearing persons and for the dispensing of such information to interested persons by collecting studies, compiling bibliographies, gathering information, and conducting research with respect to the education, training, counseling, placement, and social and economic adjustment of deaf or hard of hearing persons and with respect to the causes, diagnosis, treatment, and methods of prevention of impaired hearing;

(8) Appoint advisory or special committees when appropriate for in-depth investigations and study of particular problems and receive reports of findings and recommendations;

(9) Assess and monitor programs for services to deaf or hard of hearing persons and make recommendations to those state agencies providing such services regarding changes necessary to improve the quality and coordination of the services;

(10) Make recommendations to the Governor and the Legislature with respect to modification in existing services or establishment of additional services for deaf or hard of hearing persons. The recommendations submitted to the Legislature shall be submitted electronically;

(11) Promote awareness and understanding of the rights of deaf or hard of hearing persons;

(12) Promote statewide communication services for deaf or hard of hearing persons;

(13) Assist deaf or hard of hearing persons in accessing comprehensive mental health, alcoholism, and drug abuse services;

(14) Provide licensed interpreters in public and private settings for the benefit of deaf or hard of hearing persons, if private-practice licensed interpreters are not available, and establish and collect reasonable fees for such interpreter services;

(15) Make recommendations to the State Department of Education, public school districts, and educational service units regarding policies and procedures for qualified educational interpreter guidelines and a training program as required in subsection (3) of section 20-150, including, but not limited to, testing, training, and grievances; and

(16) Approve, conduct, and sponsor continuing education programs and other activities to assess continuing competence of licensees. The commission shall establish and charge reasonable fees for such activities. All fees collected pursuant to this section by the commission shall be remitted to the State Treasurer for credit to the Commission for the Deaf and Hard of Hearing Fund. Such fees shall be disbursed for payment of expenses related to this section.

Source: Laws 1979, LB 101, § 9; Laws 1981, LB 250, § 5; Laws 1987, LB 376, § 20; Laws 1995, LB 25, § 3; Laws 1997, LB 851, § 18; Laws 1999, LB 359, § 2; Laws 2002, LB 22, § 16; Laws 2006, LB 87, § 4; Laws 2012, LB782, § 117.

Cross References

Telecommunications Relay System Act, see section 86-301.

71-4732 Commission for the Deaf and Hard of Hearing Fund; created; use; investment.

There is hereby created a Commission for the Deaf and Hard of Hearing Fund to consist of such funds as the Legislature shall appropriate, any funds received under sections 20-156 and 71-4731, and any fees collected for interpreter services as provided in section 71-4728. The fund shall be used to administer sections 20-156 and 71-4720 to 71-4732.01, except that (1) money in the fund from fees collected for interpreter services shall be used only for expenses related to the provision of such services, (2) money in the fund may only be used to provide services pursuant to section 71-4728.04 if there is no money in the Telehealth System Fund, and (3) transfers may be made from the Commission for the Deaf and Hard of Hearing Fund to the General Fund at the direction of the Legislature. Any money in the Commission for the Deaf and Hard of Hearing 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 1979, LB 101, § 13; Laws 1995, LB 7, § 78; Laws 1995, LB 25, § 8; Laws 1997, LB 851, § 24; Laws 1999, LB 359, § 3; Laws 2001, LB 334, § 5; Laws 2002, LB 22, § 18; Laws 2009, First Spec. Sess., LB3, § 45.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(c) INFANT HEARING ACT

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 submit electronically an annual report to the Legislature stating 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; Laws 2012, LB782, § 118.

ARTICLE 48

ANATOMICAL GIFTS

(a) UNIFORM ANATOMICAL GIFT ACT

Section

- 71-4801. Repealed. Laws 2010, LB 1036, § 42.
- 71-4802. Repealed. Laws 2010, LB 1036, § 42.
- 71-4803. Repealed. Laws 2010, LB 1036, § 42.
- 71-4804. Repealed. Laws 2010, LB 1036, § 42.
- 71-4805. Repealed. Laws 2010, LB 1036, § 42.
- 71-4806. Repealed. Laws 2010, LB 1036, § 42.
- 71-4807. Repealed. Laws 2010, LB 1036, § 42.
- 71-4809. Repealed. Laws 2010, LB 1036, § 42.
- 71-4810. Repealed. Laws 2010, LB 1036, § 42.
- 71-4811. Repealed. Laws 2010, LB 1036, § 42.
- 71-4812. Repealed. Laws 2010, LB 1036, § 42.

(b) MISCELLANEOUS PROVISIONS

- 71-4813. Eye tissue; pituitary gland; removal; when authorized.
- 71-4814. Organ and tissue donations; legislative findings; protocol; development.
- 71-4815. Repealed. Laws 2010, LB 1036, § 42.
- 71-4816. Certificate of death; attestation required; statistical information.
- 71-4817. Repealed. Laws 2010, LB 1036, § 42.
- 71-4818. Repealed. Laws 2010, LB 1036, § 42.

(d) DONOR REGISTRY OF NEBRASKA

- 71-4822. Donor Registry of Nebraska; establishment; duties; restriction on information.

(e) REVISED UNIFORM ANATOMICAL GIFT ACT

- 71-4824. Act, how cited.
- 71-4825. Terms, defined.
- 71-4826. Applicability of act.
- 71-4827. Who may make anatomical gift before donor's death.
- 71-4828. Manner of making anatomical gift before donor's death.
- 71-4829. Amending or revoking anatomical gift before donor's death.
- 71-4830. Refusal to make anatomical gift; effect of refusal.
- 71-4831. Preclusive effect of anatomical gift, amendment, or revocation.

Section

- 71-4832. Who may make anatomical gift of decedent's body or part.
- 71-4833. Manner of making, amending, or revoking anatomical gift of decedent's body or part.
- 71-4834. Persons that may receive anatomical gift; purpose of anatomical gift.
- 71-4835. Search and notification.
- 71-4836. Delivery of document of gift not required; right to examine.
- 71-4837. Rights and duties of procurement organization and others.
- 71-4838. Coordination of procurement and use.
- 71-4839. Sale or purchase of parts prohibited; penalty.
- 71-4840. Other prohibited acts; penalty.
- 71-4841. Immunity.
- 71-4842. Law governing validity; choice of law as to execution of document of gift; presumption of validity.
- 71-4843. Effect of anatomical gift on advance health care directive.
- 71-4844. Uniformity of application and construction.
- 71-4845. Relation to Electronic Signatures in Global and National Commerce Act.

(a) UNIFORM ANATOMICAL GIFT ACT

71-4801 Repealed. Laws 2010, LB 1036, § 42.

71-4802 Repealed. Laws 2010, LB 1036, § 42.

71-4803 Repealed. Laws 2010, LB 1036, § 42.

71-4804 Repealed. Laws 2010, LB 1036, § 42.

71-4805 Repealed. Laws 2010, LB 1036, § 42.

71-4806 Repealed. Laws 2010, LB 1036, § 42.

71-4807 Repealed. Laws 2010, LB 1036, § 42.

71-4809 Repealed. Laws 2010, LB 1036, § 42.

71-4810 Repealed. Laws 2010, LB 1036, § 42.

71-4811 Repealed. Laws 2010, LB 1036, § 42.

71-4812 Repealed. Laws 2010, LB 1036, § 42.

(b) MISCELLANEOUS PROVISIONS

71-4813 Eye tissue; pituitary gland; removal; when authorized.

(1) 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 this section, 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:

(a) Autopsy was authorized by the county coroner;

(b) County coroner receives permission from the person having control of the disposition of the decedent's remains pursuant to section 30-2223; and

(c) 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.

(2) 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 of the University of Nebraska Medical Center may enucleate the eyes of the donor.

(3) 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; Laws 2010, LB1036, § 36; Laws 2014, LB998, § 17. Effective date April 10, 2014.

Cross References

Funeral Directing and Embalming Practice Act, see section 38-1401.

71-4814 Organ and tissue donations; legislative findings; protocol; development.

The Legislature finds that the availability of donor organs and tissue can save the lives and restore the health and productivity of many Nebraskans. Every hospital in the state shall develop a protocol, appropriate to the hospital's capability, for identifying and referring potential donor organ and tissue availability in coordination with the Revised Uniform Anatomical Gift Act. The protocol shall require utmost care and sensitivity to the family's circumstances, views, and beliefs in all discussions regarding donation of organs or tissue. Hospitals shall be required to consult with existing organ and tissue agencies preparatory to establishing a staff training and education program in the protocol. This section and section 71-4816 are for the immediate preservation of the public health and welfare.

Source: Laws 1987, LB 74, § 1; Laws 2010, LB1036, § 37.

Cross References

Revised Uniform Anatomical Gift Act, see section 71-4824.

71-4815 Repealed. Laws 2010, LB 1036, § 42.

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 under the protocol of the hospital.

(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; Laws 2010, LB1036, § 38.

71-4817 Repealed. Laws 2010, LB 1036, § 42.

71-4818 Repealed. Laws 2010, LB 1036, § 42.

(d) DONOR REGISTRY OF NEBRASKA

71-4822 Donor Registry of Nebraska; establishment; duties; restriction on information.

(1) The federally designated organ procurement organization for Nebraska shall use the information received from the Department of Motor Vehicles under section 60-494 to establish and maintain the Donor Registry of Nebraska. A procurement organization located outside of Nebraska may obtain information from the Donor Registry of Nebraska when a Nebraska resident is listed as a donor on the registry and is not located in Nebraska immediately preceding or at the time of his or her death. The federally designated organ procurement organization for Nebraska may receive donor information from sources other than the Department of Motor Vehicles and shall pay all costs associated with creating and maintaining the Donor Registry of Nebraska.

(2) It is the intent of the Legislature that the Donor Registry of Nebraska facilitate organ and tissue donations and not inhibit such donations. A person does not need to be listed on the Donor Registry of Nebraska to be an organ and tissue donor.

(3) No person shall obtain information from the Donor Registry of Nebraska for the purpose of fundraising or other commercial use. Information obtained from the Donor Registry of Nebraska may only be used to facilitate the donation process at the time of the donor's death. General statistical information may be provided upon request to the federally designated organ procurement organization for Nebraska.

Source: Laws 2004, LB 559, § 7; Laws 2010, LB1036, § 39.

(e) REVISED UNIFORM ANATOMICAL GIFT ACT

71-4824 Act, how cited.

Sections 71-4824 to 71-4845 shall be known and may be cited as the Revised Uniform Anatomical Gift Act.

Source: Laws 2010, LB1036, § 1.

71-4825 Terms, defined.

For purposes of the Revised Uniform Anatomical Gift Act:

(1) Adult means an individual who is at least eighteen years of age;

(2) Agent means an individual:

(A) Authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or

(B) Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal;

(3) Anatomical gift means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education;

(4) Decedent means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and,

subject to restrictions imposed by law other than the Revised Uniform Anatomical Gift Act, a fetus. The term decedent does not include a blastocyst, embryo, or fetus that is the subject of an induced abortion;

(5) Disinterested witness means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under section 71-4834;

(6) Document of gift means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry;

(7) Donor means an individual whose body or part is the subject of an anatomical gift;

(8) Donor registry means a data base that contains records of anatomical gifts and amendments to or revocations of anatomical gifts;

(9) Driver's license means a license or permit issued by the Department of Motor Vehicles to operate a vehicle, whether or not conditions are attached to the license or permit;

(10) Eye bank means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes;

(11) Guardian means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem;

(12) Hospital means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state;

(13) Identification card means a state identification card issued by the Department of Motor Vehicles;

(14) Know means to have actual knowledge;

(15) Minor means an individual who is under eighteen years of age;

(16) Organ procurement organization means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization;

(17) Parent means a parent whose parental rights have not been terminated;

(18) Part means an organ, an eye, or tissue of a human being. The term does not include the whole body;

(19) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(20) Physician means an individual authorized to practice medicine or osteopathy under the law of any state;

(21) Procurement organization means an eye bank, organ procurement organization, or tissue bank;

(22) Prospective donor means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal;

(23) Reasonably available means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift;

(24) Recipient means an individual into whose body a decedent's part has been or is intended to be transplanted;

(25) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(26) Refusal means a record created under section 71-4830 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part;

(27) Sign means, with the present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process;

(28) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

(29) Technician means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator;

(30) Tissue means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education;

(31) Tissue bank means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue; and

(32) Transplant hospital means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

Source: Laws 2010, LB1036, § 2.

71-4826 Applicability of act.

The Revised Uniform Anatomical Gift Act applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

Source: Laws 2010, LB1036, § 3.

71-4827 Who may make anatomical gift before donor's death.

Subject to section 71-4831, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in section 71-4828 by:

- (1) The donor, if the donor is an adult or if the donor is a minor and is:
- (A) Emancipated; or
 - (B) Authorized under state law to apply for a driver's license and the donor is at least sixteen years of age;
- (2) An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;
- (3) A parent of the donor, if the donor is an unemancipated minor; or
- (4) The donor's guardian.

Source: Laws 2010, LB1036, § 4.

71-4828 Manner of making anatomical gift before donor's death.

- (a) A donor may make an anatomical gift:
- (1) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;
 - (2) In a will;
 - (3) During a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or
 - (4) As provided in subsection (b) of this section.
- (b) A donor or other person authorized to make an anatomical gift under section 71-4827 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:
- (1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and
 - (2) State that it has been signed and witnessed as provided in subdivision (1) of this subsection.
- (c) Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.
- (d) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

Source: Laws 2010, LB1036, § 5.

71-4829 Amending or revoking anatomical gift before donor's death.

- (a) Subject to section 71-4831, a donor or other person authorized to make an anatomical gift under section 71-4827 may amend or revoke an anatomical gift by:
- (1) A record signed by:
 - (A) The donor;
 - (B) The other person; or

(C) Subject to subsection (b) of this section, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(2) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b) A record signed pursuant to subdivision (a)(1)(C) of this section must:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) State that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) Subject to section 71-4831, a donor or other person authorized to make an anatomical gift under section 71-4827 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (a) of this section.

Source: Laws 2010, LB1036, § 6.

71-4830 Refusal to make anatomical gift; effect of refusal.

(a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) A record signed by:

(A) The individual; or

(B) Subject to subsection (b) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;

(2) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(3) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(b) A record signed pursuant to subdivision (a)(1)(B) of this section must:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(2) State that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) An individual who has made a refusal may amend or revoke the refusal:

(1) In the manner provided in subsection (a) of this section for making a refusal;

(2) By subsequently making an anatomical gift pursuant to section 71-4828 that is inconsistent with the refusal; or

(3) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d) Except as otherwise provided in subsection (h) of section 71-4831, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

Source: Laws 2010, LB1036, § 7.

71-4831 Preclusive effect of anatomical gift, amendment, or revocation.

(a) Except as otherwise provided in subsection (g) of this section and subject to subsection (f) of this section, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under section 71-4828 or an amendment to an anatomical gift of the donor's body or part under section 71-4829.

(b) A donor's revocation of an anatomical gift of the donor's body or part under section 71-4829 is not a refusal and does not bar another person specified in section 71-4827 or 71-4832 from making an anatomical gift of the donor's body or part under section 71-4828 or 71-4833.

(c) If a person other than the donor has made an unrevoked anatomical gift of the donor's body or part under section 71-4828 or an amendment to an anatomical gift of the donor's body or part under section 71-4829, another person who is not the donor may not make, amend, or revoke the gift of the donor's body or part under section 71-4833.

(d) A revocation of an anatomical gift of a donor's body or part under section 71-4829 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under section 71-4828 or 71-4833.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 71-4827, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 71-4827, an anatomical gift of a part for one or more of the purposes set forth in section 71-4827 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under section 71-4828 or 71-4833.

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

Source: Laws 2010, LB1036, § 8.

71-4832 Who may make anatomical gift of decedent's body or part.

(a) Subject to subsections (b) and (c) of this section and unless barred by section 71-4830 or 71-4831, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) An agent of the decedent at the time of death who could have made an anatomical gift under subdivision (2) of section 71-4827 immediately before the decedent's death;

(2) The spouse of the decedent;

(3) Adult children of the decedent;

(4) Parents of the decedent;

(5) Adult siblings of the decedent;

(6) Adult grandchildren of the decedent;

(7) Grandparents of the decedent;

(8) The persons who were acting as the guardians of the person of the decedent at the time of death;

(9) An adult who exhibited special care and concern for the decedent other than any medical personnel caring for the decedent at the time of or immediately leading up to the decedent's death; and

(10) Any other person having the authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in subdivision (a)(1), (3), (4), (5), (6), (7), or (8) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under section 71-4834 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) of this section is reasonably available to make or to object to the making of an anatomical gift.

Source: Laws 2010, LB1036, § 9.

71-4833 Manner of making, amending, or revoking anatomical gift of decedent's body or part.

(a) A person authorized to make an anatomical gift under section 71-4832 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subsection (c) of this section, an anatomical gift by a person authorized under section 71-4832 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under section 71-4832 may be:

(1) Amended only if a majority of the reasonably available members agree to the amending of the gift; or

(2) Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c) A revocation under subsection (b) of this section is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

Source: Laws 2010, LB1036, § 10.

71-4834 Persons that may receive anatomical gift; purpose of anatomical gift.

(a) An anatomical gift may be made to the following persons named in the document of gift:

(1) A hospital; the State Anatomical Board; an accredited medical school, dental school, college, or university; an organ procurement organization; or any other appropriate person, for research or education;

(2) Subject to subsection (b) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the part; or

(3) An eye bank or tissue bank.

(b) If an anatomical gift to an individual under subdivision (a)(2) of this section cannot be transplanted into the individual, the part passes in accordance with subsection (g) of this section in the absence of an express, contrary indication by the person making the anatomical gift.

(c) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (a) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank;

(2) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank;

(3) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ;

(4) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization; and

(5) If the gift is any part other than an organ, an eye, or tissue, or the gift is all parts, and the gift is for the purpose of research or education, the gift passes to the State Anatomical Board.

(d) For the purpose of subsection (c) of this section, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (a) of this section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g) of this section.

(f) If a document of gift specifies only a general intent to make an anatomical gift by words such as donor, organ donor, or body donor, or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g) of this section.

(g) For purposes of subsections (b), (e), and (f) of this section the following rules apply:

(1) If the part is an eye, the gift passes to the appropriate eye bank;

(2) If the part is tissue, the gift passes to the appropriate tissue bank; and

(3) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subdivision (a)(2) of this section, passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass pursuant to subsections (a) through (h) of this section or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(j) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under section 71-4828 or 71-4833 or if the person knows that the decedent made a refusal under section 71-4830 that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(k) Except as otherwise provided in subdivision (a)(2) of this section, nothing in the Revised Uniform Anatomical Gift Act affects the allocation of organs for transplantation or therapy.

Source: Laws 2010, LB1036, § 11.

71-4835 Search and notification.

(a) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1) A law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual; and

(2) If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subdivision (a)(1) of this section and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(c) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

Source: Laws 2010, LB1036, § 12.

71-4836 Delivery of document of gift not required; right to examine.

(a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under section 71-4834.

Source: Laws 2010, LB1036, § 13.

71-4837 Rights and duties of procurement organization and others.

(a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Donor Registry of Nebraska established pursuant to section 71-4822 and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization must be allowed reasonable access to information in the records of the Donor Registry of Nebraska or any donor registry described in subsection (a) of this section to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to determine the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent. Measures necessary to ensure the medical suitability of the part from a prospective donor may not be administered if it is determined that the administration of those measures would not provide the prospective donor with appropriate end-of-life care or it can be anticipated by reasonable medical judgment that such measures would cause the prospective donor's death other than by the prospective donor's underlying pathology.

(d) Unless prohibited by law other than the Revised Uniform Anatomical Gift Act, at any time after a donor's death, the person to which a part passes under section 71-4834 may conduct any reasonable examination necessary to determine the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than the act, an examination under subsection (c) or (d) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the

procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a) of this section, a procurement organization shall make a reasonable search for any person listed in section 71-4832 having priority to make or object to the making of an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to subsection (i) of section 71-4834 and sections 23-1825 to 23-1832, the rights of the person to which a part passes under section 71-4834 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and the act, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under section 71-4834, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

Source: Laws 2010, LB1036, § 14.

71-4838 Coordination of procurement and use.

Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

Source: Laws 2010, LB1036, § 15.

71-4839 Sale or purchase of parts prohibited; penalty.

(a) Except as otherwise provided in subsection (b) of this section, a person that for valuable consideration, knowingly purchases or sells a part for transplantation, therapy, research, or education if removal of a part from an individual is intended to occur after the individual's death commits a Class IIIA felony.

(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

Source: Laws 2010, LB1036, § 16.

71-4840 Other prohibited acts; penalty.

A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal commits a Class IIIA felony.

Source: Laws 2010, LB1036, § 17.

71-4841 Immunity.

(a) A person that acts with reasonable care in accordance with the Revised Uniform Anatomical Gift Act or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

(b) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(c) In determining whether an anatomical gift has been made, amended, or revoked under the Revised Uniform Anatomical Gift Act, a person may rely upon representations of an individual listed in subdivision (a)(2), (3), (4), (5), (6), (7), or (9) of section 71-4832 relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

Source: Laws 2010, LB1036, § 18.

71-4842 Law governing validity; choice of law as to execution of document of gift; presumption of validity.

(a) A document of gift is valid if executed in accordance with:

(1) The Revised Uniform Anatomical Gift Act;

(2) The laws of the state or country where it was executed; or

(3) The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

(d) The age restrictions of the Revised Uniform Anatomical Gift Act do not nullify any designation of gift made on a driver's license or state identification card prior to January 1, 2011, by a person younger than sixteen years of age which was valid when made. Such person shall be considered a donor under the act, and if such a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

Source: Laws 2010, LB1036, § 19.

71-4843 Effect of anatomical gift on advance health care directive.

(a) For purposes of this section:

(1) Advance health care directive means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor;

(2) Declaration means a record signed by a prospective donor specifying the circumstances under which life-sustaining treatment may be withheld or withdrawn from the prospective donor; and

(3) Health care decision means any decision regarding the health care of the prospective donor.

(b) If a prospective donor has a declaration or advance health care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or the agent is not reasonably available, another person authorized by law other than the Revised Uniform Anatomical Gift Act to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 71-4832. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part from a prospective donor may not be administered if it is determined that the administration of those measures would not provide the prospective donor with appropriate end-of-life care or it can be anticipated by reasonable medical judgment that such measures would cause the prospective donor's death other than by the prospective donor's underlying pathology. If the conflict is not resolved expeditiously, the direction of the declaration or advanced directive controls.

Source: Laws 2010, LB1036, § 20.

71-4844 Uniformity of application and construction.

In applying and construing the Revised Uniform Anatomical Gift Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact this uniform act.

Source: Laws 2010, LB1036, § 21.

71-4845 Relation to Electronic Signatures in Global and National Commerce Act.

The Revised Uniform Anatomical Gift Act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(a) of that act, 15 U.S.C. 7001, or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Source: Laws 2010, LB1036, § 22.

ARTICLE 51

EMERGENCY MEDICAL SERVICES

(e) NEBRASKA EMERGENCY MEDICAL SYSTEM OPERATIONS FUND

Section

71-51,103. Nebraska Emergency Medical System Operations Fund; created; use; investment.

(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. 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; Laws 2012, LB782, § 119; Laws 2013, LB222, § 28.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.

Nebraska Capital Expansion Act, see section 72-1269.

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

Statewide Trauma System Act, see section 71-8201.

ARTICLE 52

RESIDENT PHYSICIAN EDUCATION AND
DENTAL EDUCATION PROGRAMS

(a) FAMILY PRACTICE RESIDENCY

Section

71-5206.01. Family practice residents; funding of stipends and benefits.

(c) PRIMARY CARE PROVIDER ACT

71-5210. Act, how cited.

71-5213. Repealed. Laws 2012, LB 782, § 253.

(a) FAMILY PRACTICE RESIDENCY

71-5206.01 Family practice residents; funding of stipends and benefits.

(1) The Legislature may provide funding to the Office of Rural Health for the purpose of funding the cost of resident stipends and benefits, which funding may include health insurance, professional liability insurance, disability insurance, medical education expenses, continuing competency expenses, pension benefits, moving expenses, and meal expenses in family practice residency programs based in Nebraska but which are not under a contract pursuant to section 71-5206. The resident stipends and benefits funded in this section shall apply only to residents who begin family practice residency training at a qualifying institution in years beginning on or after January 1, 1993. The total funding provided in the form of stipend and benefit support per resident to a family practice residency program under this section shall not exceed the total funding provided in the form of stipend and benefit support per resident to a family practice residency program under section 71-5203.

(2) Upon receiving an itemized statement of the cost of stipends and benefits of a family practice residency program from a sponsoring institution and upon

determining that the sponsoring institution is not receiving funds under a contract pursuant to section 71-5206, the office may reimburse such institution fifty percent of such cost for each family practice resident in the program. The office may reimburse such institution twenty-five percent of the remaining cost per family practice resident for each year that one of the program's graduates practices family medicine in Nebraska, up to a maximum of three years for each graduate, and an additional twenty-five percent of the remaining cost per resident for each of the program's graduates who practices family medicine in an area of Nebraska classified as of January 1, 1991, by the United States Secretary of Health and Human Services as Medicare Locale 16. The total number of residents receiving annual financial payments made under this section shall not exceed nine students during any school year.

Source: Laws 1993, LB 152, § 4; Laws 1999, LB 241, § 2; Laws 2002, LB 1021, § 89; Laws 2012, LB782, § 120; Laws 2013, LB222, § 29.

(c) PRIMARY CARE PROVIDER ACT

71-5210 Act, how cited.

Sections 71-5210 to 71-5212 shall be known and may be cited as the Primary Care Provider Act.

Source: Laws 1994, LB 1223, § 69; Laws 2012, LB782, § 121.

71-5213 Repealed. Laws 2012, LB 782, § 253.

ARTICLE 53

DRINKING WATER

(a) NEBRASKA SAFE DRINKING WATER ACT

Section

71-5301. Terms, defined.

71-5304.01. Violations; administrative orders; director; emergency powers; hearing; administrative penalties.

(b) DRINKING WATER STATE REVOLVING FUND ACT

71-5322. Department; powers and duties.

71-5326. Repealed. Laws 2011, LB 383, § 9.

(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; and

(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.

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; Laws 2012, LB723, § 1.

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 public water system serving fewer than ten thousand persons 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; Laws 2012, LB723, § 2.

Cross References

Administrative Procedure Act, see section 84-920.

(b) DRINKING WATER STATE REVOLVING FUND ACT

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. The report submitted to the Legislature shall be submitted electronically;

(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 agree-

ments 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; Laws 2012, LB782, § 122.

71-5326 Repealed. Laws 2011, LB 383, § 9.

ARTICLE 56 RURAL HEALTH

(d) RURAL HEALTH SYSTEMS AND PROFESSIONAL INCENTIVE ACT

Section

- 71-5661. Financial incentives; funding; Rural Health Professional Incentive Fund; created; use; investment.
 71-5666. Student loan recipient agreement; contents.
 71-5667. Agreements under prior law; renegotiation.
 71-5668. Loan repayment recipient agreement; contents.

(d) RURAL HEALTH SYSTEMS AND PROFESSIONAL INCENTIVE ACT

71-5661 Financial incentives; funding; Rural Health Professional Incentive Fund; created; use; investment.

(1) The financial incentives provided by the Rural Health Systems and Professional Incentive Act shall consist of (a) student loans to eligible students for attendance at an eligible school as determined pursuant to section 71-5662 and (b) the repayment of qualified educational debts owed by eligible health professionals as determined pursuant to such section. Funds for such incentives shall be appropriated from the General Fund to the department for such purposes.

(2) The Rural Health Professional Incentive Fund is created. The fund shall be used to carry out the purposes of the act, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Money credited pursuant to section 71-5670.01 and payments received pursuant to sections 71-5666 and 71-5668 shall be remitted to the State Treasurer for credit to the Rural Health Professional 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 1991, LB 400, § 12; Laws 1994, LB 1223, § 58; Laws 1995, LB 7, § 79; Laws 1996, LB 1155, § 50; Laws 1999, LB 242, § 1; Laws 2001, LB 214, § 3; Laws 2004, LB 1005, § 103; Laws 2009, First Spec. Sess., LB3, § 46.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

71-5666 Student loan recipient agreement; contents.

Each student loan recipient shall execute an agreement with the state. Such agreement shall be exempt from the requirements of sections 73-501 to 73-510 and 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; Laws 2009, LB196, § 1; Laws 2012, LB858, § 1.

71-5667 Agreements under prior law; renegotiation.

Loan agreements executed prior to July 1, 2007, under the Nebraska Medical Student Assistance Act or the Rural Health Systems and Professional Incentive Act may be renegotiated and new agreements executed to reflect the terms required by section 71-5666. No funds repaid by borrowers under the terms of agreements executed prior to July 1, 2007, shall be refunded. Any repayments being made under the terms of prior agreements may be discontinued upon execution of a new agreement if conditions permit. Any agreement renegotiated pursuant to this section shall be exempt from the requirements of sections 73-501 to 73-510.

Source: Laws 1991, LB 400, § 18; Laws 1996, LB 1155, § 55; Laws 2007, LB374, § 2; Laws 2009, LB196, § 2; Laws 2012, LB858, § 2.

Note: The Nebraska Medical Student Assistance Act, sections 71-5613 to 71-5645, was repealed by Laws 1991, LB 400, § 26.

71-5668 Loan repayment recipient agreement; contents.

Each loan repayment recipient shall execute an agreement with the department and a local entity. Such agreement shall be exempt from the requirements of sections 73-501 to 73-510 and shall include, at a minimum, the following terms:

(1) The loan repayment recipient agrees to practice his or her profession, and a physician, dentist, nurse practitioner, or physician assistant also agrees to practice an approved specialty, in a designated health profession shortage area for at least three years and to accept medicaid patients in his or her practice;

(2) In consideration of the agreement by the recipient, the State of Nebraska and a local entity within the designated health profession shortage area will provide equal funding for the repayment of the recipient's qualified educational debts, in amounts up to twenty thousand dollars per year per recipient for physicians, dentists, and psychologists and up to ten thousand dollars per year per recipient for physician assistants, nurse practitioners, pharmacists, physical therapists, occupational therapists, and mental health practitioners toward qualified educational debts for up to three years. The department shall make payments directly to the recipient; and

(3) If the loan repayment recipient discontinues practice in the shortage area prior to completion of the three-year requirement, the recipient shall repay to the state one hundred twenty-five percent of the total amount of funds provided to the recipient for loan repayment. Upon repayment by the recipient to the department, the department shall reimburse the local entity its share of the funds.

Source: Laws 1991, LB 400, § 19; Laws 1993, LB 536, § 101; Laws 1994, LB 1223, § 64; Laws 1996, LB 1155, § 56; Laws 1997, LB 577, § 5; Laws 2000, LB 1115, § 84; Laws 2001, LB 214, § 5; Laws 2004, LB 1005, § 108; Laws 2006, LB 962, § 3; Laws 2008, LB797, § 22; Laws 2009, LB196, § 3; Laws 2012, LB858, § 3.

ARTICLE 57

SMOKING AND TOBACCO

(b) TOBACCO PREVENTION AND CONTROL CASH FUND

Section 71-5714. Tobacco Prevention and Control Cash Fund; created; use; investment.

(d) NEBRASKA CLEAN INDOOR AIR ACT

71-5730. Exemptions.

(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. Transfers may be made from the fund to the General Fund at the direction of the Legislature. 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.

The State Treasurer shall transfer, on or before June 30, 2010, as directed by the budget administrator of the budget division of the Department of Administrative Services, one million three hundred thousand dollars from the Tobacco Prevention and Control Cash Fund to the Health and Human Services Cash Fund.

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; Laws 2009, First Spec. Sess., LB2, § 2; Laws 2009, First Spec. Sess., LB3, § 47.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

(d) NEBRASKA CLEAN INDOOR AIR ACT

71-5730 Exemptions.

The following indoor areas are exempt from section 71-5729:

(1) Guestrooms and suites that are rented to guests and are designated as smoking rooms, except that not more than twenty percent of rooms rented to guests in an establishment may be designated as smoking rooms. All smoking rooms on the same floor shall be contiguous, and smoke from such rooms shall not infiltrate into areas where smoking is prohibited under the Nebraska Clean Indoor Air Act;

(2) Indoor areas used in connection with a research study on the health effects of smoking conducted in a scientific or analytical laboratory under state or federal law or at a college or university approved by the Coordinating Commission for Postsecondary Education;

(3) Tobacco retail outlets; and

(4) Cigar bars as defined in section 53-103.08.

Source: Laws 2008, LB395, § 15; Laws 2009, LB355, § 6; Laws 2010, LB861, § 82.

ARTICLE 58

HEALTH CARE; CERTIFICATE OF NEED

Section

71-5803.09. Intermediate care facility, intermediate care facility for persons with developmental disabilities, defined.

71-5829.03. Certificate of need; activities requiring.

71-5829.04. Long-term care beds; moratorium; exceptions; department; duties.

71-5803.09 Intermediate care facility, intermediate care facility for persons with developmental disabilities, defined.

Intermediate care facility has the same meaning as in section 71-420 and includes an intermediate care facility for persons with developmental disabilities that has sixteen or more beds. Intermediate care facility for persons with developmental disabilities has the same meaning as in section 71-421.

Source: Laws 1979, LB 172, § 19; Laws 1988, LB 1100, § 174; R.S.1943, (1996), § 71-5819; Laws 1997, LB 798, § 13; Laws 2000, LB 819, § 116; Laws 2009, LB511, § 1; Laws 2013, LB23, § 36.

71-5829.03 Certificate of need; activities requiring.

Except as provided in section 71-5830.01, no person, including persons acting for or on behalf of a health care facility, shall engage in any of the following activities without having first applied for and received the necessary certificate of need:

(1) The initial establishment of long-term care beds or rehabilitation beds except as permitted under subdivisions (4) and (5) of this section;

(2) An increase in the long-term care beds of a health care facility by more than ten long-term care beds or more than ten percent of the total long-term care bed capacity of such facility, whichever is less, over a two-year period;

(3) An increase in the rehabilitation beds of a health care facility by more than ten rehabilitation beds or more than ten percent of the total rehabilitation bed capacity of such facility, whichever is less, over a two-year period;

(4) Any initial establishment of long-term care beds through conversion by a hospital of any type of hospital beds to long-term care beds if the total beds converted by the hospital are more than ten beds or more than ten percent of the total bed capacity of such hospital, whichever is less, over a two-year period;

(5) Any initial establishment of rehabilitation beds through conversion by a hospital of any type of hospital beds to rehabilitation beds if the total beds converted by the hospital are more than ten beds or more than ten percent of the total bed capacity of such hospital, whichever is less, over a two-year period; or

(6) Any relocation of rehabilitation beds in Nebraska from one health care facility to another health care facility, except that no certificate of need is required for relocation or transfer of rehabilitation beds from a health care facility to another health care facility owned and operated by the same entity.

Source: Laws 1997, LB 798, § 22; Laws 2008, LB765, § 1; Laws 2009, LB195, § 84; Laws 2013, LB487, § 1.

71-5829.04 Long-term care beds; moratorium; exceptions; department; duties.

(1) All long-term care beds which require a certificate of need under section 71-5829.03 are subject to a moratorium unless one of the following exceptions applies:

(a) An exception to the moratorium may be granted if the department establishes that the needs of individuals whose medical and nursing needs are complex or intensive and are above the level of capabilities of staff and above the services ordinarily provided in a long-term care bed are not currently being met by the long-term care beds licensed in the health planning region; or

(b) If the average occupancy for all licensed long-term care beds located in a twenty-five-mile radius of the proposed site has exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the application filing and there is a long-term care bed need as determined under this section, the department may grant an exception to the moratorium and issue a certificate of need. If the department determines average occupancy for all licensed long-term care beds located in a twenty-five-mile radius of the proposed site has not exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the application filing, the department shall deny the application unless the department determines that all long-term care beds in a licensed facility located in a city of the second class or village have been sold or transferred to another facility or facilities located outside of the twenty-five-mile radius of the city or village resulting in no licensed long-term care beds within the corporate limits of the city of the second class or village. In such case, the department shall waive the certificate of need limitations of this subdivision for development and licensure of a long-term care facility by a political subdivision or a nonprofit organization in such a city of the second class or village if the political subdivision or nonprofit organization agrees not to sell long-term care beds licensed under such waiver or increase the number of long-term care beds as allowed under subdivision (2) of section 71-5829.03 until five years have passed after such beds are first occupied. The number of licensed long-term care beds in the facility shall be limited to the number of long-term care beds sold or transferred as described in this subdivision.

(2) The department shall review applications which require a certificate of need under section 71-5829.03 and determine if there is a need for additional long-term care beds as provided in this section. No such application shall be approved if the current supply of licensed long-term care beds in the health planning region of the proposed site exceeds the long-term care bed need for that health planning region. For purposes of this section:

(a) Long-term care bed need is equal to the population of the health planning region, multiplied by the utilization rate of long-term care beds within the health planning region, and the result divided by the minimum occupancy rate of long-term care beds within the health planning region;

(b) Population is the most recent projection of population for the health planning region for the year which is closest to the fifth year immediately following the date of the application. The applicant shall provide such projection as part of the application using data from the University of Nebraska-Lincoln Bureau of Business Research or other source approved by the department;

(c) The utilization rate is the number of people using long-term care beds living in the health planning region in which the proposed project is located divided by the population of the health planning region; and

(d) The minimum occupancy rate is ninety-five percent for health planning regions which are part of or contain a Metropolitan Statistical Area as defined by the United States Bureau of the Census. For all other health planning regions in the state, the minimum occupancy rate is ninety percent.

(3) To facilitate the review and determination required by this section, each health care facility with long-term care beds shall report on a quarterly basis to the department the number of residents at such facility on the last day of the immediately preceding quarter on a form provided by the department. Such report shall be provided to the department no later than ninety days after the last day of the immediately preceding quarter. The department shall provide the occupancy data collected from such reports upon request. Any facility failing to timely report such information shall be ineligible for any exception to the requirement for a certificate of need under section 71-5830.01 and any exception to the moratorium imposed under this section and may not receive, transfer, or relocate long-term care beds.

Source: Laws 1997, LB 798, § 23; Laws 2009, LB195, § 85; Laws 2013, LB344, § 1.

ARTICLE 59

ASSISTED-LIVING FACILITY ACT

Section

71-5905. Admission or retention; conditions; health maintenance activities; requirements; written information provided to applicant for admission.

71-5905 Admission or retention; conditions; health maintenance activities; requirements; written information provided to applicant for admission.

(1) An assisted-living facility shall not admit or retain a resident who requires complex nursing interventions or whose condition is not stable or predictable unless:

(a) The resident, if he or she is not a minor and is competent to make a rational decision as to his or her needs or care, or his or her authorized representative, and his or her physician or a registered nurse agree that admission or retention of the resident is appropriate;

(b) The resident or his or her authorized representative agrees to arrange for the care of the resident through appropriate private duty personnel, a licensed home health agency, or a licensed hospice; and

(c) The resident's care does not compromise the facility operations or create a danger to others in the facility.

(2) Health maintenance activities at an assisted-living facility shall be performed in accordance with the Nurse Practice Act and the rules and regulations adopted and promulgated under the act.

(3) Each assisted-living facility shall provide written information about the practices of the assisted-living facility to each applicant for admission to the facility or his or her authorized representative. The information shall include:

(a) A description of the services provided by the assisted-living facility and the staff available to provide the services;

(b) The charges for services provided by the assisted-living facility;

(c) Whether or not the assisted-living facility accepts residents who are eligible for the medical assistance program under the Medical Assistance Act and, if applicable, the policies or limitations on access to services provided by the assisted-living facility for residents who seek care paid by the medical assistance program;

(d) The circumstance under which a resident would be required to leave an assisted-living facility;

(e) The process for developing and updating the resident services agreement; and

(f) For facilities that have special care units for dementia, the additional services provided to meet the special needs of persons with dementia.

Source: Laws 2004, LB 1005, § 49; Laws 2011, LB401, § 1.

Cross References

Medical Assistance Act, see section 68-901.

Nurse Practice Act, see section 38-2201.

**ARTICLE 60
NURSING HOMES**

(b) NEBRASKA NURSING HOME ACT

Section

71-6018.01. Nursing facility; nursing requirements; waiver; procedure.

(c) TRAINING REQUIREMENTS

71-6039. Nursing assistant; qualifications; training requirements; department; duties; licensure as nurse; effect.

71-6039.01. Paid dining assistant; qualifications.

71-6039.05. Paid dining assistant; nursing home; duties.

(b) NEBRASKA NURSING HOME ACT

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 regis-

tered 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 an intellectual disability. 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; Laws 2013, LB23, § 37.

(c) TRAINING REQUIREMENTS

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 persons with developmental disabilities, 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 persons with developmental disabilities, 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; Laws 2013, LB23, § 38.

71-6039.01 Paid dining assistant; qualifications.

No person shall act as a paid dining assistant in a nursing home unless such person:

- (1) Is at least sixteen years of age;
- (2) Is able to speak and understand the English language or a language understood by the nursing home resident being fed by such person;
- (3) Has successfully completed at least eight hours of training as prescribed by the department for paid dining assistants;
- (4) Has no adverse findings on the Nurse Aide Registry or the Adult Protective Services Central Registry; and

(5) Has no adverse findings on the central registry created in section 28-718 if the nursing home which employs such person as a paid dining assistant has at any one time more than one resident under the age of nineteen years.

Source: Laws 2004, LB 1005, § 115; Laws 2014, LB853, § 47.

Effective date July 18, 2014.

71-6039.05 Paid dining assistant; nursing home; duties.

Each nursing home shall maintain (1) a record of all paid dining assistants employed by such facility, (2) verification of successful completion of a training course for each paid dining assistant, and (3) verification that the facility has made checks with the Nurse Aide Registry, the Adult Protective Services Central Registry, and the central registry created in section 28-718, if applicable under section 71-6039.01, with respect to each paid dining assistant.

Source: Laws 2004, LB 1005, § 119; Laws 2014, LB853, § 48.

Effective date July 18, 2014.

ARTICLE 62

NEBRASKA REGULATION OF HEALTH PROFESSIONS ACT

Section

71-6201.	Act, how cited.
71-6202.	Purpose of act.
71-6203.	Definitions, where found.
71-6204.	Applicant group, defined.
71-6206.	Certificate or certification, defined.
71-6208.	Director, defined.
71-6208.01.	Division, defined.
71-6210.	Health profession, defined.
71-6211.	Health professional group not previously regulated, defined.
71-6213.	License, licensing, or licensure, defined.
71-6216.	Public member, defined.
71-6217.	Registration, defined.
71-6218.	Regulated health professions, defined.
71-6221.	Regulation of health profession; change in scope of practice; when.
71-6223.	Letter of intent; application; contents.
71-6223.01.	Application fee; disposition; waiver.
71-6224.	Technical committee; appointment; membership; meetings; duties.
71-6225.	Board; review technical committee report; report to director.
71-6226.	Director; prepare final report; recommendations.
71-6228.	Repealed. Laws 2012, LB 834, § 23.

71-6201 Act, how cited.

Sections 71-6201 to 71-6229 shall be known and may be cited as the Nebraska Regulation of Health Professions Act.

Source: Laws 1985, LB 407, § 1; Laws 1988, LB 384, § 1; Laws 1993, LB 536, § 102; Laws 2012, LB834, § 3.

71-6202 Purpose of act.

The purpose of the Nebraska Regulation of Health Professions Act is to establish guidelines for the regulation of health professions which are not licensed or regulated and those licensed or regulated health professions which seek to change their scope of practice. The Legislature believes that all individuals should be permitted to provide a health service, a health-related service, or

an environmental service unless there is an overwhelming need for the state to protect the public from harm.

Source: Laws 1985, LB 407, § 2; Laws 2012, LB834, § 4.

71-6203 Definitions, where found.

For purposes of the Nebraska Regulation of Health Professions Act, unless the context otherwise requires, the definitions found in sections 71-6204 to 71-6220.01 shall be used.

Source: Laws 1985, LB 407, § 3; Laws 1988, LB 384, § 2; Laws 1993, LB 536, § 103; Laws 2012, LB834, § 5.

71-6204 Applicant group, defined.

Applicant group shall mean any health professional group or organization, any individual, or any other interested party which proposes that any health professional group not previously regulated be regulated by the division or which proposes to change the scope of practice of a regulated health profession.

Source: Laws 1985, LB 407, § 4; Laws 2012, LB834, § 6.

71-6206 Certificate or certification, defined.

Certificate or certification shall mean a voluntary process by which a statutory regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by such regulatory entity and who may assume or use certified in the title or designation to perform prescribed tasks.

Source: Laws 1985, LB 407, § 6; Laws 2012, LB834, § 7.

71-6208 Director, defined.

Director shall mean the Director of Public Health of the Division of Public Health of the Department of Health and Human Services.

Source: Laws 1985, LB 407, § 8; Laws 1996, LB 1044, § 758; Laws 2007, LB296, § 652; Laws 2012, LB834, § 8.

71-6208.01 Division, defined.

Division shall mean the Division of Public Health of the Department of Health and Human Services.

Source: Laws 2012, LB834, § 9.

71-6210 Health profession, defined.

Health profession shall mean a vocation involving health services, health-related services, or environmental services requiring specialized knowledge and training. Health profession does not include the vocation of duly recognized members of the clergy acting in their ministerial capacity.

Source: Laws 1985, LB 407, § 10; Laws 2012, LB834, § 10.

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;
- (3) Providing rehabilitative or continuing care following injury or illness; or
- (4) Providing any other health service, health-related service, or environmental service which may be subject to regulation by the division.

Source: Laws 1985, LB 407, § 11; Laws 2007, LB463, § 1241; Laws 2012, LB834, § 11.

Cross References

Uniform Credentialing Act, see section 38-101.

71-6213 License, licensing, or licensure, defined.

License, licensing, or licensure shall mean permission to engage in a health profession which would otherwise be unlawful in this state in the absence of such permission and which is granted to individuals who meet prerequisite qualifications and allows them to perform prescribed tasks and use a particular title.

Source: Laws 1985, LB 407, § 13; Laws 2012, LB834, § 12.

71-6216 Public member, defined.

Public member shall mean an individual who is not, and never was, a member of the health profession being regulated, the spouse of a member, or an individual who does not have and never has had a material financial interest in the health profession being regulated or an activity directly related to the health profession being regulated.

Source: Laws 1985, LB 407, § 16; Laws 2012, LB834, § 13.

71-6217 Registration, defined.

Registration shall mean the formal notification which, prior to rendering services, a practitioner submits to a state agency setting forth the name and address of the practitioner, the location, nature, and operation of the health activity to be practiced, and such other information which is required by the regulatory entity. A registered practitioner may be subject to discipline and standards of professional conduct established by the regulatory entity and may be required to meet any test of education, experience, or training in order to render services.

Source: Laws 1985, LB 407, § 17; Laws 1988, LB 384, § 5; Laws 2012, LB834, § 14.

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;
- (3) Providing rehabilitative or continuing care following injury or illness; or
- (4) Providing any other health service, health-related service, or environmental service which may be subject to regulation by the division.

Source: Laws 1985, LB 407, § 18; Laws 2007, LB463, § 1242; Laws 2012, LB834, § 15.

Cross References

Uniform Credentialing Act, see section 38-101.

71-6221 Regulation of health profession; change in scope of practice; when.

- (1) 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;
 - (b) Regulation of the health 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 assurance from the state of initial and continuing professional ability; and
 - (d) The public cannot be protected by a more effective alternative.
- (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;
 - (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 protected by a more effective alternative.
- (3) The scope of practice of a regulated health profession shall be changed only when:
 - (a) The health, safety, and welfare of the public are inadequately addressed by the present scope of practice or limitations on the scope of practice;
 - (b) Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public;
 - (c) The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public;
 - (d) The current education and training for the health profession adequately prepares practitioners to perform the new skill or service;

(e) There are appropriate postprofessional programs and competence assessment measures available to assure that the practitioner is competent to perform the new skill or service in a safe manner; and

(f) There are adequate measures to assess whether practitioners are competently performing the new skill or service and to take appropriate action if they are not performing competently.

(4) The division 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; Laws 2012, LB834, § 16.

71-6223 Letter of intent; application; contents.

(1) An applicant group shall submit a letter of intent to file an application to the director on forms prescribed by the director. The letter of intent shall identify the applicant group, the proposed regulation or change in scope of practice sought, and information sufficient for the director to determine whether the application is eligible for review.

(2) The director shall notify the applicant group as to whether it is eligible for review within fifteen days after the receipt of the letter of intent. The final application shall be submitted to the director who shall notify the applicant group of its acceptance for review within fifteen days after receipt of the final application. If more than one application is received in a given year, the director may establish the order in which applications shall be reviewed.

(3) The application shall include an explanation of:

(a) The problem created by not regulating a health professional group not previously regulated or by not changing the scope of practice of a regulated health profession;

(b) If the application is for the regulation of a health professional group not previously regulated, all feasible methods of regulation, including those methods listed in section 71-6222, and the impact of such methods on the public;

(c) The benefit to the public of regulating a health professional group not previously regulated or changing the scope of practice of a regulated health profession;

(d) The extent to which regulation or the change of scope of practice might harm the public;

(e) The type of standards that exist to ensure that a practitioner of a health profession would maintain competency;

(f) A description of the health professional group proposed for regulation, including a list of associations, organizations, and other groups representing the practitioners in this state, an estimate of the number of practitioners in each group, and whether the groups represent different levels of practice;

(g) The role and availability of third-party reimbursement for the services provided by the applicant group;

(h) The experience of other jurisdictions in regulating the practitioners affected by the application;

(i) The expected costs of regulation, including (i) the impact registration, certification, or licensure will have on the costs of the services to the public and (ii) the cost to the state and to the general public of implementing the proposed legislation; and

(j) Other information relevant to the requested review as determined by the division.

Source: Laws 1985, LB 407, § 23; Laws 1988, LB 384, § 9; Laws 2012, LB834, § 17.

71-6223.01 Application fee; disposition; waiver.

Each application shall be accompanied by an application fee of five hundred dollars to be submitted at the time the letter of intent is filed. The division shall remit all application fees to the State Treasurer for credit to the Professional and Occupational Credentialing Cash Fund. The application fee shall not be refundable, but the director may waive all or part of the fee if he or she finds it to be in the public interest to do so. Such a finding by the director may include, but shall not be limited to, circumstances in which the director determines that the application would be eligible for review and:

(1) The applicant group is an agency of state government;

(2) Members of the applicant group will not be materially affected by the implementation of the proposed regulation or change in scope of practice; or

(3) Payment of the application fee would impose unreasonable hardship on members of the applicant group.

Source: Laws 1988, LB 384, § 14; Laws 2012, LB834, § 18.

71-6224 Technical committee; appointment; membership; meetings; duties.

(1) The director with the advice of the board shall appoint an appropriate technical committee to examine and investigate each application. The committee shall consist of six appointed members and one member of the board designated by the board who shall serve as chairperson of the committee. The chairperson of the committee shall not be a member of the applicant group, any health profession sought to be regulated by the application, or any health profession which is directly or indirectly affected by the application. The director shall ensure that the total composition of the committee is fair, impartial, and equitable. In no event shall more than one member of the same regulated health profession, the applicant group, or the health profession sought to be regulated by an application serve on a technical committee.

(2) As soon as possible after its appointment, the committee shall meet and review the application assigned to it. The committee shall serve as a factfinding body and undertake such investigation as it deems necessary to address the issues identified in the application. As part of its investigation, each committee shall consider available scientific evidence and conduct public factfinding hearings. Each committee shall comply with the Open Meetings Act.

(3) An applicant group shall have the burden of producing evidence to support its application.

(4) Each committee shall detail its findings in a report and file the report with the board and the director. Each committee shall evaluate the application presented to it on the basis of the appropriate criteria as established in sections 71-6221 to 71-6223, shall make written findings on all criteria, and shall make

a recommendation for approval or denial. Whether it recommends approval or denial of an application, the committee may make additional recommendations regarding changes to the proposal or other solutions to problems identified during the review and may comment on the anticipated benefits to the health, safety, and welfare of the public. If the committee recommends approval of an application for regulation of a health profession not currently regulated, it shall also recommend the least restrictive method of regulation to be implemented consistent with the cost-effective protection of the public and with section 71-6222. The committee may recommend a specific method of regulation not listed in section 71-6222 if it finds that such method is the best alternative method of regulation.

Source: Laws 1985, LB 407, § 24; Laws 1988, LB 384, § 10; Laws 2004, LB 821, § 20; Laws 2012, LB834, § 19.

Cross References

Open Meetings Act, see section 84-1407.

71-6225 Board; review technical committee report; report to director.

The board shall receive reports from the technical committees and shall meet to review and discuss each report. The board shall apply the criteria established in sections 71-6221 to 71-6223 and compile its own report, including its findings and recommendations, and submit such report, together with the committee report, to the director. The recommendation of the board shall be developed in a manner consistent with subsection (4) of section 71-6224.

Source: Laws 1985, LB 407, § 25; Laws 1988, LB 384, § 11; Laws 2012, LB834, § 20.

71-6226 Director; prepare final report; recommendations.

(1) After receiving and considering reports from the committee or the board, the director shall prepare a final report for the Legislature. The final report shall include copies of the committee report and the board report, if any, but the director shall not be bound by the findings and recommendations of such reports. The director in compiling his or her report shall apply the criteria established in sections 71-6221 to 71-6223 and may consult with the board or the committee. The recommendation of the director shall be developed in a manner consistent with subsection (4) of section 71-6224. The final report shall be submitted electronically to the Speaker of the Legislature, the Chairperson of the Executive Board of the Legislature, and the Chairperson of the Health and Human Services Committee of the Legislature no later than twelve months after the application is submitted to the director and found to be complete and shall be made available electronically to all other members of the Legislature upon request.

(2) The director may recommend that no legislative action be taken on an application. If the director recommends that an application of an applicant group be approved, the director shall recommend an agency to be responsible for the regulation and the level of regulation to be assigned to such applicant group.

(3) An application which is resubmitted shall be considered the same as a new application.

Source: Laws 1985, LB 407, § 26; Laws 1988, LB 384, § 12; Laws 2012, LB782, § 123; Laws 2012, LB834, § 21.

71-6228 Repealed. Laws 2012, LB 834, § 23.

ARTICLE 64

BUILDING CONSTRUCTION

Section

71-6403. State building code; adopted; amendments.

71-6404. State building code; applicability.

71-6405. State building code; compliance required.

71-6406. Political subdivision; building code; adopt; amend; enforce.

71-6403 State building code; adopted; amendments.

(1) There is hereby created the state building code. The Legislature hereby adopts by reference:

(a) The International Building Code (IBC), 2009 edition, published by the International Code Council;

(b) The International Residential Code (IRC), 2009 edition, except section R313, published by the International Code Council; and

(c) The International Existing Building Code, 2009 edition, published by the International Code Council.

(2) The codes adopted by reference in subsection (1) of this section shall constitute the state building code except as amended pursuant to the Building Construction Act or as otherwise authorized by state law.

Source: Laws 1987, LB 227, § 3; Laws 1993, LB 319, § 1; Laws 1996, LB 1304, § 4; Laws 2003, LB 643, § 1; Laws 2010, LB799, § 1; Laws 2011, LB546, § 1.

71-6404 State building code; applicability.

The state building code shall be the building and construction standard within the state and shall be applicable:

(1) To all buildings and structures owned by the state or any state agency; and

(2) In each political subdivision which elects to adopt the state building code or any component or combination of components of the state building code.

Source: Laws 1987, LB 227, § 4; Laws 1993, LB 319, § 2; Laws 2010, LB799, § 2.

71-6405 State building code; compliance required.

All state agencies, including all state constitutional offices, state administrative departments, and state boards and commissions, the University of Nebraska, and the Nebraska state colleges, shall comply with the state building code. No state agency may adopt, promulgate, or enforce any rule or regulation in conflict with the state building code unless otherwise specifically authorized by statute to adopt or enforce a building or construction code other than the state

building code. Nothing in the Building Construction Act shall authorize any state agency to apply such act to manufactured homes or recreational vehicles regulated by the Uniform Standard Code for Manufactured Homes and Recreational Vehicles or to modular housing units regulated by the Nebraska Uniform Standards for Modular Housing Units Act.

Source: Laws 1987, LB 227, § 5; Laws 1993, LB 319, § 3; Laws 1996, LB 1304, § 5; Laws 2003, LB 643, § 2; Laws 2010, LB799, § 3; Laws 2011, LB546, § 2; Laws 2012, LB1001, § 1.

Cross References

Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.

Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.

71-6406 Political subdivision; building code; adopt; amend; enforce.

(1) Any political subdivision may enact, administer, or enforce a local building or construction code if or as long as such political subdivision adopts the state building code. The political subdivision shall regularly update its code. For purposes of this section, a code shall be deemed to be regularly updated if the most recently enacted state building code is adopted by the political subdivision within two years. No political subdivision may adopt or enforce a local building or construction code other than as provided by this section.

(2) A political subdivision may amend its local building or construction code if the amendment:

(a) Conforms generally with the state building code;

(b) Adopts a special or differing building standard by modifying or deleting any portion of the state building code in order to reduce unnecessary costs of construction, increase safety, durability, or efficiency, or address special local conditions within its jurisdiction;

(c) Adopts any supplement, new edition, appendix, or component or combination of components of the state building code; or

(d) Adopts section R313 of the 2009 edition of the International Residential Code.

(3) A political subdivision may adopt and promulgate amendments for the proper administration and enforcement of its local building or construction code including organization of enforcement, qualifications of staff members, examination of plans, inspections, appeals, permits, and fees. Any amendment adopted pursuant to this section shall be published separately from the local building or construction code. Fees, if any, for services which monitor a builder's application of codes shall be negotiable between the political subdivisions involved, but such fees shall not exceed the actual expenses incurred by the political subdivision doing the monitoring.

(4) Notwithstanding the provisions of the Building Construction Act, a public building of a political subdivision shall be built in accordance with the applicable local building or construction code.

Source: Laws 1987, LB 227, § 6; Laws 1993, LB 319, § 4; Laws 2010, LB799, § 4; Laws 2011, LB546, § 3.

ARTICLE 65
IN-HOME PERSONAL SERVICES

Section

71-6502. In-home personal services worker; qualifications.

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 registry 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; Laws 2014, LB853, § 49.
Effective date July 18, 2014.

Cross References

Adult Protective Services Act, see section 28-348.

Medication Aide Act, see section 71-6718.

ARTICLE 67
MEDICATION REGULATION

(b) MEDICATION AIDE ACT

Section

71-6721. Terms, defined.

71-6725. Minimum standards for competencies.

71-6727. Medication Aide Registry; contents.

71-6736. Alleged incompetence; reports required; confidential; immunity.

(b) MEDICATION AIDE ACT

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 persons with developmental disabilities 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; Laws 2013, LB23, § 39.

Cross References

Child Care Licensing Act, see section 71-1908.

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 persons with developmental disabilities, 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 persons with developmental disabilities 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 persons with developmental disabilities 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; Laws 2013, LB23, § 40.

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 persons with developmental disabilities, 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; Laws 2013, LB23, § 41.

71-6736 Alleged incompetence; reports required; confidential; immunity.

(1) Any facility or person using the services of a medication aide shall report to the department, in the manner specified by the department by rule and regulation, any facts known to him, her, or it, including, but not limited to, the identity of the medication aide and the recipient, when it takes action adversely affecting a medication aide due to alleged incompetence. The report shall be made within thirty days after the date of the action or event.

(2) Any person may report to the department any facts known to him or her concerning any alleged incompetence of a medication aide.

(3) A report made to the department under this section shall be confidential. The facility, organization, association, or person making such report shall be immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. The reports and information shall be subject to the investigatory and enforcement provisions of the regulatory provisions listed in the Medication Aide Act. This subsection does not require production of records protected by the Health Care Quality Improvement Act or section 25-12,123 or patient safety work product under the Patient Safety

Improvement Act except as otherwise provided in either of such acts or such section.

Source: Laws 1998, LB 1354, § 26; Laws 2005, LB 361, § 34; Laws 2011, LB431, § 14.

Cross References

Health Care Quality Improvement Act, see section 71-7904.

Patient Safety Improvement Act, see section 71-8701.

ARTICLE 69

ABORTION

Section

- 71-6901. Terms, defined.
- 71-6902. Performance of abortion; notarized written consent required.
- 71-6902.01. Victim of abuse, sexual abuse, or child abuse or neglect; attending physician; duties; liability.
- 71-6902.02. Coercion to obtain abortion; prohibited; denial of financial support; effect.
- 71-6903. Abortion; authorized by court; when; procedures; confidentiality and anonymity; guardian ad litem; court order; specific factual findings and legal conclusions.
- 71-6904. Appeal; procedure; confidentiality.
- 71-6905. Court proceedings; no fees or costs required.
- 71-6906. Performance of abortion; consent not required; when.
- 71-6907. Violation by physician; penalty; civil action; immunity; prohibited acts; violation; penalty.
- 71-6908. Family or foster family abuse, neglect, or sexual assault; legislative findings and declarations; prosecution encouraged.
- 71-6909. Physician; report; contents; form; compilation by department.
- 71-6910. Sections; how construed; intent.
- 71-6911. Declaration; confidentiality.

71-6901 Terms, defined.

For purposes of sections 71-6901 to 71-6911:

(1) Abortion means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:

- (a) Save the life or preserve the health of an unborn child;
- (b) Remove a dead unborn child caused by a spontaneous abortion; or
- (c) Remove an ectopic pregnancy;

(2) Coercion means restraining or dominating the choice of a pregnant woman by force, threat of force, or deprivation of food and shelter;

(3) Consent means a declaration acknowledged before a notary public and signed by a parent or legal guardian of the pregnant woman or an alternate person as described in section 71-6902.01 declaring that the principal has been informed that the pregnant woman intends to undergo a procedure pursuant to subdivision (1) of section 71-6901 and that the principal consents to the procedure;

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

(5) Emancipated means a situation in which a person under eighteen years of age has been married or legally emancipated;

(6) Facsimile copy means a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over telecommunications lines, and then reconstructs the signals to create an exact duplicate of the original document at the receiving end;

(7) Incompetent means any person who has been adjudged a disabled person and has had a guardian appointed under sections 30-2617 to 30-2629;

(8) Medical emergency means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function;

(9) Physician means any person licensed to practice medicine in this state as provided in the Uniform Credentialing Act. Physician includes a person who practices osteopathy; and

(10) Pregnant woman means an unemancipated woman under eighteen years of age who is pregnant or a woman for whom a guardian has been appointed pursuant to sections 30-2617 to 30-2629 because of a finding of incapacity, disability, or incompetency who is pregnant.

Source: Laws 1991, LB 425, § 1; Laws 2011, LB690, § 3.

Cross References

Uniform Credentialing Act, see section 38-101.

71-6902 Performance of abortion; notarized written consent required.

Except in the case of a medical emergency or except as provided in sections 71-6902.01, 71-6903, and 71-6906, no person shall perform an abortion upon a pregnant woman unless, in the case of a woman who is less than eighteen years of age, he or she first obtains the notarized written consent of both the pregnant woman and one of her parents or a legal guardian or, in the case of a woman for whom a guardian has been appointed pursuant to sections 30-2617 to 30-2629, he or she first obtains the notarized written consent of her guardian. In deciding whether to grant such consent, a pregnant woman's parent or guardian shall consider only his or her child's or ward's best interest.

Source: Laws 1991, LB 425, § 2; Laws 2011, LB690, § 4.

71-6902.01 Victim of abuse, sexual abuse, or child abuse or neglect; attending physician; duties; liability.

If the pregnant woman declares in a signed written statement that she is a victim of abuse as defined in section 28-351, sexual abuse as defined in section 28-367, or child abuse or neglect as defined in section 28-710 by either of her parents or her legal guardians, then the attending physician shall obtain the notarized written consent required by section 71-6902 from a grandparent specified by the pregnant woman. The physician who intends to perform the abortion shall certify in the pregnant woman's medical record that he or she has received the written declaration of abuse or neglect. Any physician relying in good faith on a written statement under this section shall not be civilly or criminally liable under sections 71-6901 to 71-6911 for failure to obtain consent. If such a declaration is made, the attending physician or his or her

agent shall inform the pregnant woman of his or her duty to notify the proper authorities pursuant to sections 28-372 and 28-711.

Source: Laws 2011, LB690, § 5.

71-6902.02 Coercion to obtain abortion; prohibited; denial of financial support; effect.

No parent, guardian, or any other person shall coerce a pregnant woman to obtain an abortion. If a pregnant woman is denied financial support by her parents, guardians, or custodians due to her refusal to obtain an abortion, the pregnant woman shall be deemed emancipated for purposes of eligibility for public assistance benefits, except that such benefits may not be used to obtain an abortion.

Source: Laws 2011, LB690, § 6.

71-6903 Abortion; authorized by court; when; procedures; confidentiality and anonymity; guardian ad litem; court order; specific factual findings and legal conclusions.

(1) The requirements and procedures under this section are available to pregnant women whether or not they are residents of this state.

(2) If a pregnant woman elects not to obtain the consent of her parents or guardians, a judge of a district court, separate juvenile court, or county court sitting as a juvenile court shall, upon petition or motion and after an appropriate hearing, authorize a physician to perform the abortion if the court determines by clear and convincing evidence that the pregnant woman is both sufficiently mature and well-informed to decide whether to have an abortion. If the court does not make the finding specified in this subsection or subsection (3) of this section, it shall dismiss the petition.

(3) If the court finds, by clear and convincing evidence, that there is evidence of abuse as defined in section 28-351, sexual abuse as defined in section 28-367, or child abuse or neglect as defined in section 28-710 of the pregnant woman by a parent or a guardian or that an abortion without the consent of a parent or a guardian is in the best interest of the pregnant woman, the court shall issue an order authorizing the pregnant woman to consent to the performance or inducement of an abortion without the consent of a parent or a guardian. If the court does not make the finding specified in this subsection or subsection (2) of this section, it shall dismiss the petition.

(4) A facsimile copy of the petition or motion may be transmitted directly to the court for filing. If a facsimile copy is filed in lieu of the original document, the party filing the facsimile copy shall retain the original document for production to the court if requested to do so.

(5) A court shall not be required to have a facsimile machine nor shall the court be required to transmit orders or other material to attorneys or parties via facsimile transmission.

(6) The pregnant woman may commence an action for waiver of the consent requirement by the filing of a petition or motion personally, by mail, or by facsimile on a form provided by the State Court Administrator.

(7) The State Court Administrator shall develop the petition form and accompanying instructions on the procedure for petitioning the court for a waiver of consent, including the name, address, telephone number, and facsimi-

le number of each court in the state. A sufficient number of petition forms and instructions shall be made available in each courthouse in such place that members of the general public may obtain a form and instructions without requesting such form and instructions from the clerk of the court or other court personnel. The clerk of the court shall, upon request, assist in completing and filing the petition for waiver of consent.

(8) Proceedings in court pursuant to this section shall be confidential and shall ensure the anonymity of the pregnant woman. The pregnant woman shall have the right to file her petition in the court using a pseudonym or using solely her initials. Proceedings shall be held in camera. Only the pregnant woman, the pregnant woman's guardian ad litem, the pregnant woman's attorney, and a person whose presence is specifically requested by the pregnant woman or the pregnant woman's attorney may attend the hearing on the petition. All testimony, all documents, all other evidence presented to the court, the petition and any order entered, and all records of any nature and kind relating to the matter shall be sealed by the clerk of the court and shall not be open to any person except upon order of the court for good cause shown. A separate docket for the purposes of this section shall be maintained by the clerk of the court and shall likewise be sealed and not opened to inspection by any person except upon order of the court for good cause shown.

(9) A pregnant woman who is subject to this section may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for her. The court shall advise the pregnant woman that she has a right to court-appointed counsel and shall, upon her request, provide her with such counsel. Such counsel shall receive a fee to be fixed by the court and to be paid out of the treasury of the county in which the proceeding was held.

(10) Proceedings in court pursuant to this section shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay to serve the best interest of the pregnant woman. In no case shall the court fail to rule within seven calendar days from the time the petition is filed. If the court fails to rule within the required time period, the pregnant woman may file an application for a writ of mandamus with the Supreme Court. If cause for a writ of mandamus exists, the writ shall issue within three days.

(11) The court shall issue a written order which includes specific factual findings and legal conclusions supporting its decision which shall be provided immediately to the pregnant woman, the pregnant woman's guardian ad litem, the pregnant woman's attorney, and any other person designated by the pregnant woman to receive the order. Further, the court shall order that a confidential record of the evidence and the judge's findings and conclusions be maintained. At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect, and understanding of the pregnant woman.

Source: Laws 1991, LB 425, § 3; Laws 2011, LB690, § 7.

71-6904 Appeal; procedure; confidentiality.

(1) An appeal to the Supreme Court shall be available to any pregnant woman for whom a court denies an order authorizing an abortion without consent. An order authorizing an abortion without consent shall not be subject to appeal.

(2) An adverse ruling by the court may be appealed to the Supreme Court.

(3) A pregnant woman may file a notice of appeal of any final order to the Supreme Court. The State Court Administrator shall develop the form for notice of appeal and accompanying instructions on the procedure for an appeal. A sufficient number of forms for notice of appeal and instructions shall be made available in each courthouse in such place that members of the general public can obtain a form and instructions without requesting such form and instructions from the clerk of the court or other court personnel.

(4) The clerk of the court shall cause the court transcript and bill of exceptions to be filed with the Supreme Court within four business days, but in no event later than seven calendar days, from the date of the filing of the notice of appeal.

(5) In all appeals under this section the pregnant woman shall have the right of a confidential and expedited appeal and the right to counsel at the appellate level if not already represented. Such counsel shall be appointed by the court and shall receive a fee to be fixed by the court and to be paid out of the treasury of the county in which the proceeding was held. The pregnant woman shall not be required to appear.

(6) The Supreme Court shall hear the appeal de novo on the record and issue a written decision which shall be provided immediately to the pregnant woman, the pregnant woman's guardian ad litem, the pregnant woman's attorney, or any other person designated by the pregnant woman to receive the order.

(7) The Supreme Court shall rule within seven calendar days from the time of the docketing of the appeal in the Supreme Court.

(8) The Supreme Court shall adopt and promulgate rules to ensure that proceedings under this section are handled in a confidential and expeditious manner.

Source: Laws 1991, LB 425, § 4; Laws 2011, LB690, § 8.

71-6905 Court proceedings; no fees or costs required.

No filing fees or costs shall be required of any pregnant woman at either the trial or appellate level for any proceedings pursuant to sections 71-6901 to 71-6911.

Source: Laws 1991, LB 425, § 5; Laws 2011, LB690, § 9.

71-6906 Performance of abortion; consent not required; when.

Consent shall not be required pursuant to sections 71-6901 to 71-6911 if any of the following conditions exist:

(1) The attending physician certifies in the pregnant woman's medical record that a medical emergency exists and there is insufficient time to obtain the required consent; or

(2) Consent is waived under section 71-6903.

Source: Laws 1991, LB 425, § 6; Laws 2005, LB 116, § 23; Laws 2011, LB690, § 10.

71-6907 Violation by physician; penalty; civil action; immunity; prohibited acts; violation; penalty.

(1) Any physician or attending physician who knowingly and intentionally or with reckless disregard performs an abortion in violation of sections 71-6901 to 71-6906 and 71-6909 to 71-6911 shall be guilty of a Class III misdemeanor.

(2) Performance of an abortion in violation of such sections shall be grounds for a civil action by a person wrongfully denied the right and opportunity to consent.

(3) A person shall be immune from liability under such sections (a) if he or she establishes by written evidence that he or she relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant woman regarding information necessary to comply with such sections are bona fide and true or (b) if the person has performed an abortion authorized by a court order issued pursuant to section 71-6903 or 71-6904.

(4) Any person not authorized to provide consent under sections 71-6901 to 71-6911 who provides consent is guilty of a Class III misdemeanor.

(5) Any person who coerces a pregnant woman to have an abortion is guilty of a Class III misdemeanor.

Source: Laws 1991, LB 425, § 7; Laws 2011, LB690, § 11.

71-6908 Family or foster family abuse, neglect, or sexual assault; legislative findings and declarations; prosecution encouraged.

The Legislature recognizes and hereby declares that some teenage pregnancies are a direct or indirect result of family or foster family abuse, neglect, or sexual assault. The Legislature further recognizes that the actions of abuse, neglect, or sexual assault are crimes regardless of whether they are committed by strangers, acquaintances, or family members. The Legislature further recognizes the need for a parental consent bypass system as set out in section 71-6903 due to the number of unhealthy family environments in which some pregnant women reside. The Legislature encourages county attorneys to prosecute persons accused of committing acts of abuse, incest, neglect, or sexual assault pursuant to sections 28-319, 28-319.01, 28-320, 28-320.01, 28-703, and 28-707 even if the alleged crime is committed by a biological or adoptive parent, foster parent, or other biological, adoptive, or foster family member.

Source: Laws 1991, LB 425, § 8; Laws 2006, LB 1199, § 56; Laws 2011, LB690, § 13.

71-6909 Physician; report; contents; form; compilation by department.

A monthly report indicating only the number of consents obtained under sections 71-6901 to 71-6911, the number of times in which exceptions were made to the consent requirement under such sections, the type of exception, the pregnant woman's age, and the number of prior pregnancies and prior abortions of the pregnant woman shall be filed by the physician with the department on forms prescribed by the department. The name of the pregnant woman shall not be used on the forms. A compilation of the data reported shall be made by the department on an annual basis and shall be available to the public.

Source: Laws 2011, LB690, § 12.

71-6910 Sections; how construed; intent.

(1) Nothing in sections 71-6901 to 71-6911 shall be construed as creating or recognizing a right to abortion.

(2) It is not the intent of sections 71-6901 to 71-6911 to make lawful an abortion that is currently unlawful.

Source: Laws 2011, LB690, § 14.

71-6911 Declaration; confidentiality.

A declaration under sections 71-6901 to 71-6911 shall be confidential except as would be required in any court proceedings under such sections.

Source: Laws 2011, LB690, § 15.

ARTICLE 74

WHOLESALE DRUG DISTRIBUTOR LICENSING

Section

71-7447. Wholesale drug distributor; licenses; requirements; exemptions.

71-7460.02. Health care facility; peer review organization, or professional association; duty to report; confidentiality; immunity; failure to report; civil penalty.

71-7447 Wholesale drug distributor; licenses; requirements; exemptions.

(1) No person or entity may act as a wholesale drug distributor in this state without first obtaining a wholesale drug distributor license from the department. The department shall issue a license to any applicant that satisfies the requirements for licensure under the Wholesale Drug Distributor Licensing Act. Manufacturers are exempt from any licensing and other requirements of the act to the extent not required by federal law or regulation except for those requirements deemed necessary and appropriate under rules and regulations adopted and promulgated by the department.

(2) Wholesale medical gas distributors shall be exempt from any licensing and other requirements of the Wholesale Drug Distributor Licensing Act to the extent not required under federal law but shall be licensed as wholesale drug distributors by the department for the limited purpose of engaging in the wholesale distribution of medical gases upon application to the department, payment of a licensure fee, and inspection of the applicant's facility by the department, except that the applicant may submit and the department may accept an inspection accepted in another state or an inspection conducted by a nationally recognized accreditation program approved by the board. For purposes of such licensure, wholesale medical gas distributors shall only be required to provide information required under subdivisions (1)(a) through (1)(c) of section 71-7448.

(3) The Wholesale Drug Distributor Licensing Act does not apply to:

(a) An agent or employee of a licensed wholesale drug distributor who possesses drug samples when such agent or employee is acting in the usual course of his or her business or employment; or

(b) Any person who (i) engages in a wholesale transaction relating to the manufacture, distribution, sale, transfer, or delivery of medical gases the gross dollar value of which does not exceed five percent of the total retail sales of medical gases by such person during the immediately preceding calendar year and (ii) has either a pharmacy permit or license or a delegated dispensing permit or is exempt from the practice of pharmacy under subdivision (12) of section 38-2850.

Source: Laws 1992, LB 1019, § 17; Laws 1997, LB 752, § 198; Laws 2001, LB 398, § 84; Laws 2003, LB 242, § 148; R.S.1943, (2003), § 71-7417; Laws 2006, LB 994, § 21; Laws 2010, LB849, § 27.

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 the Health Care Quality Improvement Act or section 25-12,123 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in either of such acts or such section.

(3) Any health care facility, peer review organization, or professional association that fails or neglects to make a report or provide information as required under this section is subject to a civil penalty of five hundred dollars for the first offense and a civil penalty of up to one thousand dollars for a subsequent offense. Any civil penalty collected under this subsection shall be remitted to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

(4) For purposes of this section, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as the act existed on January 1, 2007, and may require a supplemental report to the extent such reports do not contain the information required by the department.

Source: Laws 2007, LB463, § 1298; Laws 2011, LB431, § 15.

Cross References

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

Health Care Quality Improvement Act, see section 71-7904.

Nebraska Hospital-Medical Liability Act, see section 44-2855.

Patient Safety Improvement Act, see section 71-8701.

**ARTICLE 76
HEALTH CARE****(b) NEBRASKA HEALTH CARE FUNDING ACT**

Section

71-7606. Purpose of act; restrictions on use of funds; report.

71-7611. Nebraska Health Care Cash Fund; created; use; investment; report.

(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 and administration and enforcement of the Master Settlement Agreement as defined in section 69-2702.

(2) Any funds appropriated or distributed under the act shall not be considered ongoing entitlements or obligations on the part of the State of Nebraska and shall not be used to replace existing funding for existing programs.

(3) No funds appropriated or distributed under the act shall be used for abortion, abortion counseling, referral for abortion, or research or activity of any kind involving the use of human fetal tissue obtained in connection with the performance of an induced abortion or involving the use of human embryonic stem cells or for the purpose of obtaining other funding for such use.

(4) The Department of Health and Human Services shall report annually to the Legislature and the Governor regarding the use of funds appropriated under the act and the outcomes achieved from such use. The report submitted to the Legislature shall be submitted electronically.

Source: Laws 1998, LB 1070, § 2; Laws 2000, LB 1427, § 3; Laws 2001, LB 692, § 14; Laws 2003, LB 412, § 4; Laws 2007, LB296, § 676; Laws 2008, LB469, § 1; Laws 2011, LB590, § 18; Laws 2012, LB782, § 124.

71-7611 Nebraska Health Care Cash Fund; created; use; investment; report.

(1) The Nebraska Health Care Cash Fund is created. The State Treasurer shall transfer (a) fifty-six million one hundred thousand dollars no later than July 15, 2009, (b) fifty-nine million one hundred thousand dollars on or before July 15, 2010, July 15, 2011, July 15, 2012, and July 15, 2013, and (c) sixty million one hundred thousand dollars on or before July 15, 2014, and on or before every July 15 thereafter from the Nebraska Medicaid Intergovernmental Trust Fund and the Nebraska Tobacco Settlement Trust Fund to the Nebraska Health Care Cash Fund, except that such amount shall be reduced by the amount of the unobligated balance in the Nebraska Health Care Cash Fund at the time the transfer is made. 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 electronically to the Legislature on or before October 1 of every even-numbered year on the sustainability of such transfers. Except as otherwise provided by law, no more than the amount specified in this subsec-

tion may be appropriated or transferred from the Nebraska Health Care Cash Fund in any fiscal year.

It is the intent of the Legislature that no additional programs are funded through the Nebraska Health Care Cash Fund until funding for all programs with an appropriation from the fund during FY2012-13 are restored to their FY2012-13 levels.

(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) 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; Laws 2008, LB480, § 2; Laws 2008, LB830, § 9; Laws 2008, LB961, § 5; Laws 2009, LB27, § 7; Laws 2009, LB316, § 19; Laws 2012, LB782, § 125; Laws 2012, LB969, § 9; Laws 2013, LB199, § 29; Laws 2014, LB906, § 18.
Effective date March 30, 2014.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 79

HEALTH CARE QUALITY IMPROVEMENT ACT

(a) PEER REVIEW COMMITTEES

Section

71-7901. Repealed. Laws 2011, LB 431, § 17.

71-7902. Repealed. Laws 2011, LB 431, § 17.

71-7903. Repealed. Laws 2011, LB 431, § 17.

(b) HEALTH CARE QUALITY IMPROVEMENT ACT

71-7904. Act, how cited.

71-7905. Purposes of act.

71-7906. Definitions, where found.

71-7907. Health care provider, defined.

71-7908. Incident report, defined.

71-7909. Peer review, defined.

71-7910. Peer review committee, defined.

71-7911. Liability for activities relating to peer review.

71-7912. Confidentiality; discovery; availability of medical records, documents, or information; limitation.

71-7913. Incident report or risk management report; how treated.

(a) PEER REVIEW COMMITTEES

71-7901 Repealed. Laws 2011, LB 431, § 17.

71-7902 Repealed. Laws 2011, LB 431, § 17.

71-7903 Repealed. Laws 2011, LB 431, § 17.**(b) HEALTH CARE QUALITY IMPROVEMENT ACT****71-7904 Act, how cited.**

Sections 71-7904 to 71-7913 shall be known and may be cited as the Health Care Quality Improvement Act.

Source: Laws 2011, LB431, § 1.

71-7905 Purposes of act.

The purposes of the Health Care Quality Improvement Act are to provide protection for those individuals who participate in peer review activities which evaluate the quality and efficiency of health care providers and to protect the confidentiality of peer review records.

Source: Laws 2011, LB431, § 2.

71-7906 Definitions, where found.

For purposes of the Health Care Quality Improvement Act, the definitions found in sections 71-7907 to 71-7910 apply.

Source: Laws 2011, LB431, § 3.

71-7907 Health care provider, defined.

Health care provider means:

- (1) A facility licensed under the Health Care Facility Licensure Act;
 - (2) A health care professional licensed under the Uniform Credentialing Act;
- and
- (3) An organization or association of health care professionals licensed under the Uniform Credentialing Act.

Source: Laws 2011, LB431, § 4.

Cross References

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

Uniform Credentialing Act, see section 38-101.

71-7908 Incident report, defined.

Incident report or risk management report means a report of an incident involving injury or potential injury to a patient as a result of patient care provided by a health care provider, including both an individual who provides health care and an entity that provides health care, that is created specifically for and collected and maintained for exclusive use by a peer review committee of a health care entity and that is within the scope of the functions of that committee.

Source: Laws 2011, LB431, § 5.

71-7909 Peer review, defined.

Peer review means the procedure by which health care providers evaluate the quality and efficiency of services ordered or performed by other health care providers, including practice analysis, inpatient hospital and extended care facility utilization review, medical audit, ambulatory care review, root cause

analysis, claims review, underwriting assistance, and the compliance of a hospital, nursing home, or other health care facility operated by a health care provider with the standards set by an association of health care providers and with applicable laws, rules, and regulations.

Source: Laws 2011, LB431, § 6.

71-7910 Peer review committee, defined.

Peer review committee means a utilization review committee, quality assessment committee, performance improvement committee, tissue committee, credentialing committee, or other committee established by the governing board of a facility which is a health care provider that does either of the following:

(1) Conducts professional credentialing or quality review activities involving the competence of, professional conduct of, or quality of care provided by a health care provider, including both an individual who provides health care and an entity that provides health care; or

(2) Conducts any other attendant hearing process initiated as a result of a peer review committee's recommendations or actions.

Source: Laws 2011, LB431, § 7.

71-7911 Liability for activities relating to peer review.

(1) A health care provider or an individual (a) serving as a member or employee of a peer review committee, working on behalf of a peer review committee, furnishing counsel or services to a peer review committee, or participating in a peer review activity as an officer, director, employee, or member of the governing board of a facility which is a health care provider and (b) acting without malice shall not be held liable in damages to any person for any acts, omissions, decisions, or other conduct within the scope of the functions of a peer review committee.

(2) A person who makes a report or provides information to a peer review committee shall not be subject to suit as a result of providing such information if such person acts without malice.

Source: Laws 2011, LB431, § 8.

71-7912 Confidentiality; discovery; availability of medical records, documents, or information; limitation.

(1) The proceedings, records, minutes, and reports of a peer review committee shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action. No person who attends a meeting of a peer review committee, works for or on behalf of a peer review committee, provides information to a peer review committee, or participates in a peer review activity as an officer, director, employee, or member of the governing board of a facility which is a health care provider shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings or activities of the peer review committee or as to any findings, recommendations, evaluations, opinions, or other actions of the peer review committee or any members thereof.

(2) Nothing in this section shall be construed to prevent discovery or use in any civil action of medical records, documents, or information otherwise available from original sources and kept with respect to any patient in the

ordinary course of business, but the records, documents, or information shall be available only from the original sources and cannot be obtained from the peer review committee's proceedings or records.

Source: Laws 2011, LB431, § 9.

71-7913 Incident report or risk management report; how treated.

An incident report or risk management report and the contents of an incident report or risk management report are not subject to discovery in, and are not admissible in evidence in the trial of, a civil action for damages for injury, death, or loss to a patient of a health care provider. A person who prepares or has knowledge of the contents of an incident report or risk management report shall not testify and shall not be required to testify in any civil action as to the contents of the report.

Source: Laws 2011, LB431, § 10.

ARTICLE 82

STATEWIDE TRAUMA SYSTEM ACT

Section

71-8215. Emergency medical service, defined.

71-8215 Emergency medical service, defined.

Emergency medical service means the organization responding to a perceived individual need for medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

Source: Laws 1997, LB 626, § 15; Laws 2012, LB646, § 3.

ARTICLE 83

CREDENTIALING OF HEALTH CARE FACILITIES

Section

71-8313. Department; credentialing recommendations.

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 electronically 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; Laws 2012, LB782, § 126.

ARTICLE 84

MEDICAL RECORDS

Section

71-8403. Access to medical records.

71-8403 Access to medical records.

(1) A patient may request a copy of the patient's medical records or may request to examine such records. Access to such records shall be provided upon

request pursuant to sections 71-8401 to 71-8407, except that mental health medical records may be withheld if any treating physician, psychologist, or mental health practitioner determines in his or her professional opinion that release of the records would not be in the best interest of the patient unless the release is required by court order. The request and any authorization shall be in writing. If an authorization does not contain an expiration date or specify an event the occurrence of which causes the authorization to expire, the authorization shall expire twelve months after the date the authorization was executed by the patient.

(2) Upon receiving a written request for a copy of the patient's medical records under subsection (1) of this section, the provider shall furnish the person making the request a copy of such records not later than thirty days after the written request is received.

(3) Upon receiving a written request to examine the patient's medical records under subsection (1) of this section, the provider shall, as promptly as required under the circumstances but no later than ten days after receiving the request: (a) Make the medical records available for examination during regular business hours; (b) inform the patient if the records do not exist or cannot be found; (c) if the provider does not maintain the records, inform the patient of the name and address of the provider who maintains such records, if known; or (d) if unusual circumstances have delayed handling the request, inform the patient in writing of the reasons for the delay and the earliest date, not later than twenty-one days after receiving the request, when the records will be available for examination. The provider shall furnish a copy of medical records to the patient as provided in subsection (2) of this section if requested.

(4) This section does not require the retention of records or impose liability for the destruction of records in the ordinary course of business prior to receipt of a request made under subsection (1) of this section. A provider shall not be required to disclose confidential information in any medical record concerning another patient or family member who has not consented to the release of the record.

Source: Laws 1999, LB 17, § 3; Laws 2010, LB849, § 28.

ARTICLE 85

TELEHEALTH SERVICES

(a) NEBRASKA TELEHEALTH ACT

Section

71-8503. Terms, defined.

71-8506. Medical assistance program; reimbursement; requirements.

71-8508. Rules and regulations.

(b) CHILDREN'S BEHAVIORAL HEALTH

71-8509. Telehealth services for children's behavioral health; rules and regulations; terms, defined.

71-8510. Behavioral health screenings; legislative intent; optional screening.

71-8511. Behavioral Health Education Center; duties.

71-8512. Behavioral Health Screening and Referral Pilot Program; created by University of Nebraska Medical Center; clinics; selection; collection of data; evaluation; termination of section.

(a) NEBRASKA TELEHEALTH ACT

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 medical information electronically exchanged from one site to another, whether synchronously or asynchronously, to aid a health care practitioner in the diagnosis or treatment of a patient. Telehealth includes services originating from a patient's home or any other location where such patient is located, asynchronous services involving the acquisition and storage of medical information at one site that is then forwarded to or retrieved by a health care practitioner at another site for medical evaluation, and telemonitoring;

(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; and

(5) Telemonitoring means the remote monitoring of a patient's vital signs, biometric data, or subjective data by a monitoring device which transmits such data electronically to a health care practitioner for analysis and storage.

Source: Laws 1999, LB 559, § 3; Laws 2007, LB296, § 695; Laws 2014, LB1076, § 1.

Effective date July 18, 2014.

71-8506 Medical assistance program; reimbursement; requirements.

(1) In-person contact between a health care practitioner and a patient shall not be required under the medical assistance program established pursuant to the Medical Assistance Act and Title XXI of the federal Social Security Act, as amended, for health care services delivered through telehealth that are otherwise eligible for reimbursement under such program and federal act. Such services shall be subject to reimbursement policies developed pursuant to such program and federal act. This section also applies to managed care plans which contract with the department pursuant to the Medical Assistance Act only to the extent that:

(a) Health care services delivered through telehealth are covered by and reimbursed under the medicaid fee-for-service program; and

(b) Managed care contracts with managed care plans are amended to add coverage of health care services delivered through telehealth and any appropriate capitation rate adjustments are incorporated.

(2) The reimbursement rate for a telehealth consultation shall, as a minimum, be set at the same rate as the medical assistance program rate for a comparable in-person consultation, and the rate shall not depend on the distance between the health care practitioner and the patient.

(3) The department shall establish rates for transmission cost reimbursement for telehealth consultations, considering, to the extent applicable, reductions in travel costs by health care practitioners and patients to deliver or to access health care services and such other factors as the department deems relevant. Such rates shall include reimbursement for all two-way, real-time, interactive communications, unless provided by an Internet service provider, between the patient and the physician or health care practitioner at the distant site which

comply with the federal Health Insurance Portability and Accountability Act of 1996 and rules and regulations adopted thereunder and with regulations relating to encryption adopted by the federal Centers for Medicare and Medicaid Services and which satisfy federal requirements relating to efficiency, economy, and quality of care.

Source: Laws 1999, LB 559, § 6; Laws 2006, LB 1248, § 82; Laws 2013, LB556, § 6; Laws 2014, LB1076, § 2.
Effective date July 18, 2014.

Cross References

Medical Assistance Act, see section 68-901.

71-8508 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the Nebraska Telehealth Act, including, but not limited to, rules and regulations to: (1) Ensure the provision of appropriate care to patients; (2) prevent fraud and abuse; and (3) establish necessary methods and procedures.

Source: Laws 1999, LB 559, § 8; Laws 2014, LB1076, § 3.
Effective date July 18, 2014.

(b) CHILDREN'S BEHAVIORAL HEALTH

71-8509 Telehealth services for children's behavioral health; rules and regulations; terms, defined.

(1) The Department of Health and Human Services shall adopt and promulgate rules and regulations providing for telehealth services for children's behavioral health. Such rules and regulations relate specifically to children's behavioral health and are in addition to the Nebraska Telehealth Act.

For purposes of sections 71-8509 to 71-8512, child means a person under nineteen years of age.

(2) The rules and regulations required pursuant to subsection (1) of this section shall include, but not be limited to:

(a) An appropriately trained staff member or employee familiar with the child's treatment plan or familiar with the child shall be immediately available in person to the child receiving a telehealth behavioral health service in order to attend to any urgent situation or emergency that may occur during provision of such service. This requirement may be waived by the child's parent or legal guardian;

(b) In cases in which there is a threat that the child may harm himself or herself or others, before an initial telehealth service the health care practitioner shall work with the child and his or her parent or guardian to develop a safety plan. Such plan shall document actions the child, the health care practitioner, and the parent or guardian will take in the event of an emergency or urgent situation occurring during or after the telehealth session. Such plan may include having a staff member or employee familiar with the child's treatment plan immediately available in person to the child, if such measures are deemed necessary by the team developing the safety plan; and

(c) Services provided by means of telecommunications technology, other than telehealth behavioral health services received by a child, are not covered if the

child has access to a comparable service within thirty miles of his or her place of residence.

Source: Laws 2013, LB556, § 1.

Cross References

Nebraska Telehealth Act, see section 71-8501.

71-8510 Behavioral health screenings; legislative intent; optional screening.

It is the intent of the Legislature that behavioral health screenings be offered by physicians at the time of childhood physicals. The physician shall explain that such screening is optional. The results of behavioral health screenings and any related documents shall not be included in the child's school record and shall not be provided to the child's school or to any other person or entity without the express consent of the child's parent or legal guardian.

Source: Laws 2013, LB556, § 2.

71-8511 Behavioral Health Education Center; duties.

The Behavioral Health Education Center created pursuant to section 71-830 shall provide education and training for educators on children's behavioral health in the areas of the state served by the Behavioral Health Screening and Referral Pilot Program created pursuant to section 71-8512.

Source: Laws 2013, LB556, § 3.

71-8512 Behavioral Health Screening and Referral Pilot Program; created by University of Nebraska Medical Center; clinics; selection; collection of data; evaluation; termination of section.

(1) The University of Nebraska Medical Center shall create the Behavioral Health Screening and Referral Pilot Program. The pilot program shall utilize a strategy of screening and behavioral health intervention in coordination with the regional behavioral health authorities established pursuant to section 71-808 in which the clinics identified under subsection (2) of this section are located. It is the intent of the Legislature that the pilot program demonstrate a method of addressing the unmet emotional or behavioral health needs of children that can be replicated statewide. Under the pilot program, behavioral health screening will be offered: (a) In primary care providers' offices during examinations under the early and periodic screening, diagnosis, and treatment services program pursuant to 42 U.S.C. 1396d(r), as such section existed on January 1, 2013; or (b) upon request from parents or legal guardians who have concerns about a child's behavioral health.

(2) Three clinics shall be selected to serve as sites for the pilot program, including at least one rural and one urban clinic. Selected clinics shall have child psychologists integrated in the pediatric practice of the clinics. Parents or legal guardians of children participating in the pilot program shall be offered routine mental and behavioral health screening for their child during required physical examinations or at the request of a parent or legal guardian. Behavioral health screening shall be administered by clinic staff and interpreted by the psychiatrist, psychiatric nurse practitioner, psychologist, or licensed mental health practitioner and the child's primary care physician.

(3) Children identified through such screenings as being at risk may be referred for further evaluation and diagnosis as indicated. If intervention is

required, the primary care medical team, including the psychologist and the primary care physician, shall develop a treatment plan collaboratively with the parent or legal guardian and any other individuals identified by the parent or legal guardian. If appropriate, the child shall receive behavioral therapy, medication, or combination therapy within the primary care practice setting.

(4) Consultation via telephone or telehealth with faculty and staff of the departments of Child and Adolescent Psychiatry, Psychiatric Nursing, and Developmental Pediatrics, and the Munroe-Meyer Institute Psychology Department, of the University of Nebraska Medical Center shall be available to the primary care practice and the children as needed to manage the care of children with mental or behavioral health issues that require more specialized care than can be provided by the primary care practice.

(5) Data on the pilot program shall be collected and evaluated by the Interdisciplinary Center for Program Evaluation at the Munroe-Meyer Institute of the University of Nebraska Medical Center. Evaluation of the pilot program shall include, but not be limited to:

(a) The number of referrals for behavioral health screening under the pilot program;

(b) Whether each referral is initiated by a parent, a school, or a physician;

(c) The number of children and adolescents recommended for further psychological assessment after screening for a possible behavioral health disorder;

(d) The number and type of further psychological assessments of children and adolescents recommended and conducted;

(e) The number and type of behavioral health disorders in children and adolescents diagnosed as a result of a further psychological assessment following a behavioral health screening under the pilot program;

(f) The number and types of referrals of children and adolescents for behavioral health treatment from primary care medical practitioners;

(g) The number of children and adolescents successfully treated for a behavioral health disorder based upon patient reports, parent ratings, and academic records;

(h) The number and type of referrals of children and adolescents to psychiatric backup services at the University of Nebraska Medical Center;

(i) The number of children and adolescents diagnosed with a behavioral health disorder who are successfully managed or treated through psychiatric backup services from the University of Nebraska Medical Center;

(j) The number and types of medications, consultations, or prescriptions ordered by psychiatric nurse practitioners for children and adolescents;

(k) The number of referrals of children and adolescents for severe behavioral health disorders and consultations to child psychiatrists, developmental pediatricians, or psychologists specializing in treatment of adolescents;

(l) The number of children and adolescents referred to psychiatric hospitals or emergency departments of acute care hospitals for treatment for dangerous or suicidal behavior;

(m) The number of children and adolescents prescribed psychotropic medications and the types of such psychotropic medications; and

(n) Data collection on program costs and financial impact as related to capacity for replication in other primary care practices. Primary program costs

include physician and psychologist time for conducting screenings, family interviews, further testing, and specialist consulting costs relating to consulting services by psychiatric nurses, developmental pediatricians, and psychologists. Treatment or medications paid by private insurance, the medical assistance program, or the State Children's Health Insurance Program shall not be included in program costs pursuant to this subdivision.

(6) This section terminates two years after September 6, 2013.

Source: Laws 2013, LB556, § 4.

Termination date September 6, 2015.

ARTICLE 86

BLIND AND VISUALLY IMPAIRED

Section

71-8611. Vending facilities; license; priority status.

71-8612. Commission for the Blind and Visually Impaired Cash Fund; created; use; investment.

71-8613. Annual report.

71-8611 Vending facilities; license; priority status.

For the purpose of providing blind persons with remunerative employment, enlarging the economic opportunities of blind persons, and stimulating blind persons to greater efforts in striving to make themselves self-supporting, the commission shall administer and operate vending facilities programs pursuant to the federal Randolph-Sheppard Act, as amended, 20 U.S.C. 107 et seq. Blind persons licensed by the commission pursuant to its rules and regulations are authorized to operate vending facilities in any federally owned building or on any federally owned or controlled property, in any state-owned building or on any property owned or controlled by the state, or on any property owned or controlled by any county, city, or municipality with the approval of the local governing body, when, in the judgment of the director of the commission, such vending facilities may be properly and satisfactorily operated by blind persons. With respect to vending facilities in any state-owned building or on any property owned or controlled by the state, priority shall be given to blind persons, except that this shall not apply to the Game and Parks Commission or the University of Nebraska. This priority shall only be given if the product price in the bid submitted is comparable in price to the product price in the other bids submitted for similar products sold in similar buildings or on similar property and all other components of the bid for a contract, except for any rent paid to the state, are found to be reasonably equivalent to the other bidders.

Source: Laws 1961, c. 443, § 1, p. 1363; Laws 1973, LB 32, § 1; Laws 1976, LB 674, § 3; Laws 1996, LB 1044, § 929; R.S.1943, (1999), § 83-210.03; Laws 2000, LB 352, § 11; Laws 2004, LB 1005, § 134; Laws 2012, LB858, § 4.

71-8612 Commission for the Blind and Visually Impaired Cash Fund; created; use; investment.

The Commission for the Blind and Visually Impaired Cash Fund is created. The fund shall contain money received pursuant to the Commission for the Blind and Visually Impaired Act and shall include a percentage of the net proceeds derived from the operation of vending facilities. The net proceeds

from the operation of vending facilities shall accrue to the blind vending facility operator, except for the percentage of the net proceeds that shall revert to the cash fund. Such fund shall be used for supervision and other administrative purposes as necessary, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. The commission, in consultation with the Committee of Blind Vendors, shall determine the percentage of the net proceeds that reverts to the Commission for the Blind and Visually Impaired Cash Fund after an investigation to reveal the gross proceeds, cost of operation, amount necessary to replenish the stock of merchandise, and the business needs of the blind vending facility operator. All equipment purchased from the fund is the property of the state and shall be disposed of only by sale at a fair market price. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1947, c. 343, § 1, p. 1085; Laws 1949, c. 292, § 1, p. 996; Laws 1957, c. 386, § 1, p. 1343; Laws 1961, c. 442, § 1, p. 1362; Laws 1965, c. 561, § 1, p. 1845; Laws 1969, c. 584, § 113, p. 2418; Laws 1971, LB 334, § 6; Laws 1976, LB 674, § 1; Laws 1995, LB 7, § 142; R.S.1943, (1999), § 83-210.01; Laws 2000, LB 352, § 12; Laws 2005, LB 55, § 2; Laws 2009, First Spec. Sess., LB3, § 48.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

71-8613 Annual report.

The commission shall file an annual report with the Governor and the Clerk of the Legislature, prior to each regular session of the Legislature, which details the activities and expenditures of the commission and shall include separately information related to the activities and expenditures of the vending facility program as well as estimates of anticipated expenditures and anticipated revenue available to the vending facility program from all sources. The report submitted to the Clerk of the Legislature shall be submitted electronically.

Source: Laws 2000, LB 352, § 13; Laws 2012, LB782, § 127.

ARTICLE 88

STEM CELL RESEARCH ACT

Section

71-8804. Committee; establish grant process; reports.

71-8805. Stem Cell Research Cash Fund; created; use; investment.

71-8804 Committee; establish grant process; reports.

(1) The committee shall establish a grant process to award grants to Nebraska institutions or researchers for the purpose of conducting nonembryonic stem cell research. The grant process shall include, but not be limited to, an application identifying the institution or researcher applying for the grant, the amount of funds to be received by the applicant from sources other than state funds, the sources of such funds, and a description of the goal of the research for which the funds will be used and research methods to be used by the applicant.

(2) The committee shall submit electronically an annual report to the Legislature stating the number of grants awarded, the amount of the grants, and the researchers or institutions to which the grants were awarded.

Source: Laws 2008, LB606, § 4; Laws 2012, LB782, § 128.

71-8805 Stem Cell Research Cash Fund; created; use; investment.

(1) The Stem Cell Research Cash Fund is created. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) Money credited to the Stem Cell Research Cash Fund shall be used to provide a dollar-for-dollar match, up to five hundred thousand dollars per fiscal year, of funds received by institutions or researchers from sources other than funds provided by the State of Nebraska for nonembryonic stem cell research. Such matching funds shall be awarded through the grant process established pursuant to section 71-8804. No single institution or researcher shall receive more than seventy percent of the funds available for distribution under this section on an annual basis.

(3) Up to three percent of the funds credited to the Stem Cell Research Cash Fund shall be available to the Division of Public Health of the Department of Health and Human Services for administrative costs, including stipends and reimbursements pursuant to section 71-8803.

Source: Laws 2008, LB606, § 5; Laws 2009, LB316, § 20; Laws 2012, LB969, § 10.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 90

SEXUAL ASSAULT OR DOMESTIC VIOLENCE PATIENT

Section

71-9001. Sexual assault or domestic violence patient; examination and treatment authorized.

71-9001 Sexual assault or domestic violence patient; examination and treatment authorized.

A physician, his or her agent, or a mental health professional as defined in section 71-906, upon consultation with a patient who is eighteen years of age, shall, with the consent of the patient, make or cause to be made a diagnostic examination for physical or mental injuries associated with sexual assault or domestic violence and prescribe for and treat such person for injuries associated with sexual assault or domestic violence. All such examinations and treatment may be performed without the consent of or notification to the parent, parents, guardian, or any other person having custody of the patient.

Source: Laws 2011, LB479, § 2.

ARTICLE 91
CONCUSSION AWARENESS ACT

Section

- 71-9101. Act, how cited.
71-9102. Legislative findings.
71-9103. Terms, defined.
71-9104. Schools; duties; participant on athletic team; actions required; notice to parent or guardian; effect of signature of licensed health care professional.
71-9105. City, village, business, or nonprofit organization; duties; participant in athletic activity; actions required; notice to parent or guardian; effect of signature of licensed health care professional.
71-9106. Act; how construed.

71-9101 Act, how cited.

Sections 71-9101 to 71-9106 shall be known and may be cited as the Concussion Awareness Act.

Source: Laws 2011, LB260, § 1.

71-9102 Legislative findings.

(1) The Legislature finds that concussions are one of the most commonly reported injuries in children and adolescents who participate in sports and recreational activities and that the risk of catastrophic injury or death is significant when a concussion or brain injury is not properly evaluated and managed.

(2) The Legislature further finds that concussions are a type of brain injury that can range from mild to severe and can disrupt the way the brain normally works. Concussions can occur in any organized or unorganized sport or recreational activity and can result from a fall or from players colliding with each other, the ground, or with obstacles. Concussions occur with or without loss of consciousness, but the vast majority occur without loss of consciousness.

(3) The Legislature further finds that continuing to play with a concussion or symptoms of brain injury leaves a young athlete especially vulnerable to greater injury and even death. The Legislature recognizes that, despite having generally recognized return-to-play standards for concussion and brain injury, some young athletes are prematurely returned to play, resulting in actual or potential physical injury or death.

Source: Laws 2011, LB260, § 2.

71-9103 Terms, defined.

For purposes of the Concussion Awareness Act:

(1) Chief medical officer means the chief medical officer as designated in section 81-3115; and

(2) Licensed health care professional means a physician or licensed practitioner under the direct supervision of a physician, a certified athletic trainer, a neuropsychologist, or some other qualified individual who (a) is registered, licensed, certified, or otherwise statutorily recognized by the State of Nebraska to provide health care services and (b) is trained in the evaluation and management of traumatic brain injuries among a pediatric population.

Source: Laws 2011, LB260, § 3.

71-9104 Schools; duties; participant on athletic team; actions required; notice to parent or guardian; effect of signature of licensed health care professional.

(1) Each approved or accredited public, private, denominational, or parochial school shall:

(a) Make available training approved by the chief medical officer on how to recognize the symptoms of a concussion or brain injury and how to seek proper medical treatment for a concussion or brain injury to all coaches of school athletic teams;

(b) Require that concussion and brain injury information be provided on an annual basis to students and the students' parents or guardians prior to such students initiating practice or competition. The information provided to students and the students' parents or guardians shall include, but need not be limited to:

(i) The signs and symptoms of a concussion;

(ii) The risks posed by sustaining a concussion; and

(iii) The actions a student should take in response to sustaining a concussion, including the notification of his or her coaches; and

(c) Establish a return to learn protocol for students that have sustained a concussion. The return to learn protocol shall recognize that students who have sustained a concussion and returned to school may need informal or formal accommodations, modifications of curriculum, and monitoring by medical or academic staff until the student is fully recovered.

(2)(a) A student who participates on a school athletic team shall be removed from a practice or game when he or she is reasonably suspected of having sustained a concussion or brain injury in such practice or game after observation by a coach or a licensed health care professional who is professionally affiliated with or contracted by the school. Such student shall not be permitted to participate in any school supervised team athletic activities involving physical exertion, including, but not limited to, practices or games, until the student (i) has been evaluated by a licensed health care professional, (ii) has received written and signed clearance to resume participation in athletic activities from the licensed health care professional, and (iii) has submitted the written and signed clearance to resume participation in athletic activities to the school accompanied by written permission to resume participation from the student's parent or guardian.

(b) If a student is reasonably suspected after observation of having sustained a concussion or brain injury and is removed from an athletic activity under subdivision (2)(a) of this section, the parent or guardian of the student shall be notified by the school of the date and approximate time of the injury suffered by the student, the signs and symptoms of a concussion or brain injury that were observed, and any actions taken to treat the student.

(c) Nothing in this subsection shall be construed to require any school to provide for the presence of a licensed health care professional at any practice or game.

(d) The signature of an individual who represents that he or she is a licensed health care professional on a written clearance to resume participation that is provided to a school shall be deemed to be conclusive and reliable evidence that the individual who signed the clearance is a licensed health care profes-

sional. The school shall not be required to determine or verify the individual's qualifications.

Source: Laws 2011, LB260, § 4; Laws 2014, LB923, § 5.
Effective date July 18, 2014.

71-9105 City, village, business, or nonprofit organization; duties; participant in athletic activity; actions required; notice to parent or guardian; effect of signature of licensed health care professional.

(1) Any city, village, business, or nonprofit organization that organizes an athletic activity in which the athletes are nineteen years of age or younger and are required to pay a fee to participate in the athletic activity or whose cost to participate in the athletic activity is sponsored by a business or nonprofit organization shall:

(a) Make available training approved by the chief medical officer on how to recognize the symptoms of a concussion or brain injury and how to seek proper medical treatment for a concussion or brain injury to all coaches; and

(b) Provide information on concussions and brain injuries to all coaches and athletes and to a parent or guardian of each athlete that shall include, but need not be limited to:

(i) The signs and symptoms of a concussion;

(ii) The risks posed by sustaining a concussion; and

(iii) The actions an athlete should take in response to sustaining a concussion, including the notification of his or her coaches.

(2)(a) An athlete who participates in an athletic activity under subsection (1) of this section shall be removed from a practice or game when he or she is reasonably suspected of having sustained a concussion or brain injury in such practice or game after observation by a coach or a licensed health care professional. Such athlete shall not be permitted to participate in any supervised athletic activities involving physical exertion, including, but not limited to, practices or games, until the athlete (i) has been evaluated by a licensed health care professional, (ii) has received written and signed clearance to resume participation in athletic activities from the licensed health care professional, and (iii) has submitted the written and signed clearance to resume participation in athletic activities to the city, village, business, or nonprofit organization that organized the athletic activity accompanied by written permission to resume participation from the athlete's parent or guardian.

(b) If an athlete is reasonably suspected after observation of having sustained a concussion or brain injury and is removed from an athletic activity under subdivision (2)(a) of this section, the parent or guardian of the athlete shall be notified by the coach or a representative of the city, village, business, or nonprofit organization that organized the athletic activity of the date and approximate time of the injury suffered by the athlete, the signs and symptoms of a concussion or brain injury that were observed, and any actions taken to treat the athlete.

(c) Nothing in this subsection shall be construed to require any city, village, business, or nonprofit organization to provide for the presence of a licensed health care professional at any practice or game.

(d) The signature of an individual who represents that he or she is a licensed health care professional on a written clearance to resume participation that is

provided to a city, village, business, or nonprofit organization shall be deemed to be conclusive and reliable evidence that the individual who signed the clearance is a licensed health care professional. The city, village, business, or nonprofit organization shall not be required to determine or verify the individual's qualifications.

Source: Laws 2011, LB260, § 5.

71-9106 Act; how construed.

Nothing in the Concussion Awareness Act shall be construed to create liability for or modify the liability or immunity of a school, school district, city, village, business, or nonprofit organization or the officers, employees, or volunteers of any such school, school district, city, village, business, or nonprofit organization.

Source: Laws 2011, LB260, § 6.

ARTICLE 92

HEALTH CARE TRANSPARENCY ACT

Section

71-9201. Act, how cited.

71-9202. Health Care Data Base Advisory Committee; Nebraska Health Care Data Base.

71-9203. Health Care Data Base Advisory Committee; members.

71-9204. Health Care Data Base Advisory Committee; duties; Director of Insurance; report.

71-9201 Act, how cited.

Sections 71-9201 to 71-9204 shall be known and may be cited as the Health Care Transparency Act.

Source: Laws 2014, LB76, § 1.

Effective date February 14, 2014.

71-9202 Health Care Data Base Advisory Committee; Nebraska Health Care Data Base.

The Director of Insurance shall appoint the Health Care Data Base Advisory Committee to make recommendations regarding the creation and implementation of the Nebraska Health Care Data Base which shall provide a tool for objective analysis of health care costs and quality, promote transparency for health care consumers, and facilitate the reporting of health care and health quality data. The Nebraska Health Care Data Base shall be used to:

- (1) Provide information to consumers and purchasers of health care;
- (2) Determine the capacity and distribution of existing health care resources;
- (3) Identify health care needs and inform health care policy;
- (4) Evaluate the effectiveness of intervention programs on improving patient outcomes;
- (5) Review costs among various treatment settings, providers, and approaches; and
- (6) Improve the quality and affordability of patient health care and health care coverage.

Source: Laws 2014, LB76, § 2.

Effective date February 14, 2014.

71-9203 Health Care Data Base Advisory Committee; members.

(1) The Health Care Data Base Advisory Committee shall be appointed within forty-five business days after February 14, 2014.

(2) The advisory committee members appointed by the Director of Insurance shall include, but not be limited to:

(a) A member of academia with experience in health care data and cost efficiency research;

(b) At least one representative of hospitals;

(c) At least one representative of physicians;

(d) At least one other representative of health care providers;

(e) A representative of small employers that purchase group health insurance for employees, which representative is not an insurer or insurance producer;

(f) A representative of large employers that purchase health insurance for employees, which representative is not an insurer or insurance producer;

(g) At least one health care consumer advocate, knowledgeable about private market insurance, public health insurance programs, enrollment and access, or related areas and has background or experience in consumer health care advocacy;

(h) At least one representative of health insurers;

(i) A representative of organizations that facilitate health information exchange to improve health care for all Nebraskans; and

(j) At least one representative of local public health departments.

(3) The following shall serve as ex officio members of the advisory committee:

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

(b) The Director of Medicaid and Long-Term Care of the Division of Medicaid and Long-Term Care of the Department of Health and Human Services or his or her designee; and

(c) The Director of Public Health of the Division of Public Health of the Department of Health and Human Services or his or her designee.

(4) The members of the advisory committee appointed pursuant to subsection (2) of this section shall serve without compensation and shall not be reimbursed for expenses incurred in the performance of their duties on the committee.

Source: Laws 2014, LB76, § 3.

Effective date February 14, 2014.

71-9204 Health Care Data Base Advisory Committee; duties; Director of Insurance; report.

(1) The Health Care Data Base Advisory Committee shall make recommendations to the Director of Insurance regarding the Nebraska Health Care Data Base that:

(a) Include specific strategies to measure and collect data related to health care safety and quality, utilization, health outcomes, and cost;

(b) Focus on data elements that foster quality improvement and peer group comparisons;

(c) Facilitate value-based, cost-effective purchasing of health care services by public and private purchasers and consumers;

(d) Result in usable and comparable information that allows public and private health care purchasers, consumers, and data analysts to identify and compare health plans, health insurers, health care facilities, and health care providers regarding the provision of safe, cost-effective, high-quality health care services;

(e) Use and build upon existing data collection standards, reporting requirements, and methods to establish and maintain the data base in a cost-effective and efficient manner;

(f) Incorporate and utilize claims, eligibility, and other publicly available data to the extent it is the most cost-effective method of collecting data to minimize the cost and administrative burden on data sources;

(g) Include discussions regarding the standardization of the Nebraska Health Care Data Base with other states and regions and federal efforts concerning all-payer claims data bases;

(h) Include discussions regarding the integration of data collection requirements of the health insurance exchange as required by the federal Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, Public Law 111-152, and any amendments thereto or regulations or guidance issued under those acts;

(i) Include discussions regarding a limit on the number of times the Nebraska Health Care Data Base may require submission of the required data elements;

(j) Include discussions regarding a limit on the number of times the data base may change the required data elements for submission in a calendar year considering administrative costs, resources, and time required to fulfill the requests;

(k) Include discussions regarding compliance with the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, and other proprietary information related to collection and release of data;

(l) Discuss issues surrounding the availability of the data for research and other purposes; and

(m) Include whether the advisory committee should continue to exist and provide recommendations to the Department of Insurance regarding the Nebraska Health Care Data Base after the report required in subsection (2) of this section is completed.

(2) On or before December 15, 2014, the Director of Insurance shall report to the Governor and the Legislature the recommendations of the advisory committee.

Source: Laws 2014, LB76, § 4.

Effective date February 14, 2014.

CHAPTER 72

PUBLIC LANDS, BUILDINGS, AND FUNDS

Article.

2. School Lands and Funds. 72-201 to 72-274.
8. Public Buildings. 72-804 to 72-815.
10. Building Funds. 72-1001.
12. Investment of State Funds.
 - (a) Nebraska State Funds Investment Act. 72-1243 to 72-1255.
 - (b) Nebraska Capital Expansion Act. 72-1263.
 - (d) Review of Nebraska Investment Council. 72-1278.
17. Small Business Incubators. 72-1710.
18. Joslyn Castle. Repealed.
20. Niobrara River Corridor. 72-2009.
22. Nebraska State Capitol Preservation and Restoration Act. 72-2211.
25. Nebraska Incentives Fund. 72-2501.

ARTICLE 2

SCHOOL LANDS AND FUNDS

Section

- 72-201. Board of Educational Lands and Funds; members; appointment; terms; expenses; duties; qualifications; organization; chairperson; meetings; secretary.
- 72-240.26. Board of Educational Lands and Funds; Nebraska Investment Council; annual report; contents.
- 72-258.03. School lands; sale; appraised value.
- 72-270. Production of wind or solar energy; agreements; sections applicable.
- 72-271. Production of wind or solar energy; agreements; terms, defined.
- 72-272. Production of wind energy or solar energy; agreements; board; powers.
- 72-273. Wind energy or solar energy agreement; prior lease; effect on rights; compensation for damages.
- 72-274. Wind energy or solar energy agreement; rules and regulations.

72-201 Board of Educational Lands and Funds; members; appointment; terms; expenses; duties; qualifications; organization; chairperson; meetings; secretary.

(1) The Board of Educational Lands and Funds shall consist of five members to be appointed by the Governor with the consent of a majority of the members elected to the Legislature. One member shall be appointed from each of the congressional districts as the districts were constituted on January 1, 1961, and a fifth member shall be appointed from the state at large. One member of the board shall be competent in the field of investments. The initial members shall be appointed to take office on October 1, 1955, and shall hold office for the following periods of time: The member from the first congressional district for one year; the member from the second congressional district for two years; the member from the third congressional district for three years; the member from the fourth congressional district for four years; and the member from the state at large for five years. As the terms of the members expire, the Governor shall appoint or reappoint a member of the board for a term of five years, except members appointed to fill vacancies whose tenures shall be the unexpired terms

for which they are appointed. If the Legislature is not in session when such members, or some of them, are appointed by the Governor, such members shall take office and act as recess appointees until the Legislature next thereafter convenes. The compensation of the members shall be fifty dollars per day for each day's time actually engaged in the performance of the duties of their office. Each member shall be paid his or her necessary traveling expenses incurred while upon business of the board as provided in sections 81-1174 to 81-1177. The board shall cause all school, university, agricultural college, and state college lands, owned by or the title to which may hereafter vest in the state, to be registered, leased, and sold as provided in sections 72-201 to 72-251 and shall have the general management and control of such lands and make necessary rules not provided by law. The funds arising from these lands shall be disposed of in the manner provided by the Constitution of Nebraska, sections 72-201 to 72-251, and other laws of Nebraska not inconsistent herewith.

(2) No person shall be eligible to membership on the board who is actively engaged in the teaching profession, who holds or has any financial interest in a school land lease, who is a holder of or a candidate for any state office or a member of any state board or commission, or who has not resided in this state for at least three years.

(3) The board shall elect one of its members as chairperson of the Board of Educational Lands and Funds. In the absence of the chairperson, any member of the board may, upon motion duly carried, act in his or her behalf as such chairperson. It shall keep a record of all proceedings and orders made by it. No order shall be made except upon the concurrence of at least three members of the board. It shall make all orders pertaining to the handling of all lands and funds set apart for educational purposes.

(4) The board shall maintain an office in Lincoln and shall meet in its office not less than once each month.

(5) The board may appoint a secretary for the board. The compensation of the secretary shall be payable monthly, as fixed by the board.

Source: Laws 1899, c. 69, § 1, p. 300; R.S.1913, § 5845; C.S.1922, § 5181; C.S.1929, § 72-201; Laws 1935, c. 163, § 1, p. 594; Laws 1937, c. 162, § 1, p. 628; C.S.Supp.,1941, § 72-201; R.S.1943, § 72-201; Laws 1945, c. 175, § 1, p. 559; Laws 1951, c. 338, § 3, p. 117; Laws 1953, c. 252, § 1, p. 857; Laws 1955, c. 276, § 1, p. 874; Laws 1955, c. 277, § 1, p. 877; Laws 1961, c. 282, § 5, p. 822; Laws 1965, c. 434, § 1, p. 1383; Laws 1969, c. 589, § 1, p. 2438; Laws 1981, LB 204, § 141; Laws 1999, LB 779, § 12; Laws 2011, LB332, § 1; Laws 2014, LB967, § 3.
Effective date April 3, 2014.

Cross References

Constitutional provisions:

Board of Educational Lands and Funds, duties, membership, see Article VII, section 6, Constitution of Nebraska.

Fees, see sections 25-1280 and 33-104.

Other provisions relating to the board, see Chapter 84, article 4.

State-owned geothermal resources, authority to lease, see section 66-1104.

72-240.26 Board of Educational Lands and Funds; Nebraska Investment Council; annual report; contents.

The Board of Educational Lands and Funds and the Nebraska Investment Council shall jointly report annually to the Clerk of the Legislature, and such

report shall contain anticipated future actions by the board as well as actions already taken. The report submitted to the Clerk of the Legislature shall be submitted electronically. The board's portion of the report shall include (1) with reference to each tract of land sold pursuant to section 72-201.01: (a) The legal description; (b) the unique characteristics of the land being sold; (c) the appraised value; (d) the sale price; (e) the amount of funds received in the calendar year covered by the report from the sale; (f) the disposition of the funds; (g) the total number of acres of any unsold educational lands remaining under the general management and control of the board by county; (h) the total appraised value of unsold land; and (i) the percentage of the investment portfolio remaining in real estate, including all nonagricultural real estate and (2) the corresponding information for any land that has been acquired or traded. The council's portion of the report shall include a cost-benefit analysis which considers the land being sold versus the anticipated investment potential of proceeds resulting from the sale. The cost-benefit analysis model used shall be consistent with the standards of the investment industry at the time of the proposed sale. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the chairperson of the board.

Source: Laws 1974, LB 894, § 6; Laws 1979, LB 322, § 31; Laws 1996, LB 1205, § 2; Laws 2000, LB 1010, § 2; Laws 2012, LB782, § 129.

72-258.03 School lands; sale; appraised value.

For purposes of sales of educational lands at public auction, appraised value is the value as determined by the Board of Educational Lands and Funds.

Source: Laws 2000, LB 1010, § 1; Laws 2007, LB166, § 2; Laws 2009, LB166, § 3; Laws 2011, LB210, § 3; Laws 2012, LB800, § 1.

72-270 Production of wind or solar energy; agreements; sections applicable.

Agreements involving the production of wind or solar energy on lands under the control of the Board of Educational Lands and Funds shall be regulated by sections 72-270 to 72-274.

Source: Laws 2010, LB235, § 1; Laws 2012, LB828, § 11.

72-271 Production of wind or solar energy; agreements; terms, defined.

For purposes of sections 72-270 to 72-274:

(1) Agreement means (a) for purposes of a solar energy system, a solar agreement as defined in section 66-909 and (b) for purposes of a wind energy conversion system, a wind agreement as defined in section 66-909.04;

(2) Board means the Board of Educational Lands and Funds;

(3) Lessee means any individual, corporation, or other entity that enters into an agreement with the board;

(4) Solar energy means radiant energy, direct, diffuse, or reflected, received from the sun at wavelengths suitable for conversion into thermal, chemical, or electrical energy; and

(5) Wind energy has the definition found in section 66-909.01.

Source: Laws 2010, LB235, § 2; Laws 2012, LB828, § 12.

72-272 Production of wind energy or solar energy; agreements; board; powers.

The board may authorize agreements for the use of any school or public lands belonging to the state and under its control for exploration and development of wind energy or solar energy for such durations and under such terms and conditions as the board shall deem appropriate, except that such agreements shall comply with sections 66-901 to 66-914. In making such determinations, the board shall consider comparable arrangements involving other lands similarly situated and any other relevant factors bearing upon such agreements.

Source: Laws 2010, LB235, § 3; Laws 2012, LB828, § 13.

72-273 Wind energy or solar energy agreement; prior lease; effect on rights; compensation for damages.

(1) If an agreement relating to wind energy or solar energy is authorized by the board on land already being leased for agricultural or other purposes by a prior lessee, the existing rights of the prior lessee shall not be impaired, and the board shall reduce the rental amount due from such prior lessee in proportion to the amount of land that is removed from use as a result of the agreement.

(2) A lessee for agricultural or other purposes shall be compensated for all damages to personal property owned by such lessee or to growing crops, including grass, caused by operations under a concurrent agreement regarding such land for wind energy or solar energy purposes, and the board shall require the lessee under the agreement to provide such insurance and indemnity agreements which the board determines are necessary for the protection of the state and its lessees.

(3) If an agreement relating to wind energy or solar energy is authorized by the board on land concurrently being leased for agricultural purposes, the lessee for agricultural purposes shall have priority as to the use of the water on the land, but lessees for other purposes, including parties to agreements relating to wind energy or solar energy, shall be allowed reasonable use of the water on the land.

Source: Laws 2010, LB235, § 4; Laws 2012, LB828, § 14.

72-274 Wind energy or solar energy agreement; rules and regulations.

The board may adopt and promulgate such rules and regulations as it shall deem necessary and proper to regulate the agreements relating to wind energy or solar energy exploration and development on school and public lands pursuant to sections 72-270 to 72-274 and to prescribe such terms and conditions, including bonds, as it shall deem necessary in order to protect the interests of the state and its lessees.

Source: Laws 2010, LB235, § 5; Laws 2012, LB828, § 15.

ARTICLE 8**PUBLIC BUILDINGS**

Section

72-804. New state building; code requirements.

72-805. Buildings constructed with state funds; code requirements.

72-806. Enforcement.

72-813. Vacant buildings and excess land; list; compilation; committee; review status; disposition; considerations.

Section

72-815. Vacant buildings and excess land; state building division; powers and duties; demolition; sale; lease; proceeds; disposition; maintenance; excess land at Hastings Regional Center; sale; distribution of proceeds.

72-804 New state building; code requirements.

(1) Any new state building shall meet or exceed the requirements of the 2009 International Energy Conservation Code.

(2) Any new lighting, heating, cooling, ventilating, or water heating equipment or controls in a state-owned building and any new building envelope components installed in a state-owned building shall meet or exceed the requirements of the 2009 International Energy Conservation Code.

(3) The State Building Administrator of the Department of Administrative Services, in consultation with the State Energy Office, may specify:

(a) A more recent edition of the International Energy Conservation Code;

(b) Additional energy efficiency or renewable energy requirements for buildings; and

(c) Waivers of specific requirements which are demonstrated through life-cycle cost analysis to not be in the state's best interest. The agency receiving the funding shall be required to provide a life-cycle cost analysis to the State Building Administrator.

Source: Laws 1999, LB 755, § 1; Laws 2003, LB 643, § 3; Laws 2004, LB 888, § 1; Laws 2011, LB329, § 1.

72-805 Buildings constructed with state funds; code requirements.

The 2009 International Energy Conservation Code applies to all new buildings constructed in whole or in part with state funds after August 27, 2011. The State Energy Office shall review building plans and specifications necessary to determine whether a building will meet the requirements of this section. The State Energy Office shall provide a copy of its review to the agency receiving funding. The agency receiving the funding shall verify that the building as constructed meets or exceeds the code. The verification shall be provided to the State Energy Office. The State Energy Office shall, in consultation with the State Building Administrator of the Department of Administrative Services, adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1999, LB 755, § 2; Laws 2004, LB 888, § 2; Laws 2011, LB329, § 2.

72-806 Enforcement.

The enforcement provisions of Chapter 1 of the 2009 International Energy Conservation Code shall not apply to buildings subject to section 72-804.

Source: Laws 1999, LB 755, § 3; Laws 2003, LB 643, § 4; Laws 2004, LB 888, § 3; Laws 2011, LB329, § 3.

72-813 Vacant buildings and excess land; list; compilation; committee; review status; disposition; considerations.

(1) Each state agency shall by September 15 of each year submit to the State Building Administrator a list of all state-owned buildings and land for which it is responsible and shall note the current and planned uses of each building and

parcel of land. The State Building Administrator shall compile the information on state-owned buildings and land and provide it, along with any other information or recommendations he or she may consider relevant to the purposes of sections 72-811 to 72-818, to the Vacant Building and Excess Land Committee and to the Legislative Fiscal Analyst. The information provided to the Legislative Fiscal Analyst shall be submitted electronically.

(2) The committee shall meet to review the information and consider further action or possible amendments to orders made pursuant to this section. If the committee determines that there is reason to believe that any particular state-owned building or piece of land is vacant or excess, the committee shall review the status of the building or land and by majority vote determine whether it should be declared vacant or excess.

(3) If the committee declares a building or land to be vacant or excess, it shall order either maintenance of the building or land by the state building division of the Department of Administrative Services or the disposal of the building or land through sale, lease, demolition, or otherwise. Any order for disposal of a building may include related lands. In determining the appropriate action to be taken in regard to a building or land, the committee shall consider the benefits to the state of the alternative possible actions, including cost-effectiveness, other possible future uses of the building or land for state purposes, and the necessity or utility of the building or land for the furtherance of existing or planned state programs.

Source: Laws 1988, LB 1143, § 3; Laws 1990, LB 830, § 3; Laws 1992, LB 1241, § 8; Laws 1995, LB 567, § 4; Laws 2012, LB782, § 130.

72-815 Vacant buildings and excess land; state building division; powers and duties; demolition; sale; lease; proceeds; disposition; maintenance; excess land at Hastings Regional Center; sale; distribution of proceeds.

(1) The state building division of the Department of Administrative Services shall be responsible for the sale, lease, or other disposal of a building or land, whichever action is ordered by the committee.

(2) If a building is to be demolished, section 72-810 shall not apply, but the state building division shall notify the State Historic Preservation Officer of such demolition at least thirty days prior to the beginning of the demolition or disassembly so that the officer may collect any photographic or other evidence he or she may find of historic value.

(3)(a) If a building or land is to be sold or leased, the state building division shall cause an appraisal to be made of the building or land. The sale, lease, or other disposal of the building or land shall comply with all relevant statutes pertaining to the sale or lease of surplus state property, except that if the state building division fails to receive an offer from a state agency in which the agency certifies that it (i) intends to use the building for the purposes for which it was designed, intended, or remodeled or to remodel the building for uses which will serve the agency's purposes or (ii) intends to use the land for the purposes for which it was acquired or received, the state building division shall then notify the Department of Economic Development that the building or land is available for sale or lease so that the department may refer to the state building division any potential buyers or lessees of which the department may be aware. The state building division may then sell or lease the building or land by such method as is to the best advantage of the State of Nebraska, including

auction, sealed bid, or public sale and, if necessary, by private sale, but in all situations only after notice of the property sale is publicly advertised on at least two separate occasions in the newspaper with the largest circulation in the county where the surplus property is located and not less than thirty days prior to the sale of the property. The state building division may use the services of a real estate broker licensed under the Nebraska Real Estate License Act. Priority shall be given to other political subdivisions of state government, then to persons contracting with the state or political subdivisions of the state who will use the building or land for middle-income or low-income rental housing for at least fifteen years, and finally to referrals from the Department of Economic Development.

(b) When a building or land designated for sale is listed in the National Register of Historic Places, the state building division, in its discretion and based on the best interests of the state, may follow the procedure outlined in subdivision (3)(a) of this section or may sell the building or land by any method deemed in the best interests of the state to a not-for-profit community organization that intends to maintain the historic and cultural integrity of the building or land.

(c) All sales and leases shall be in the name of the State of Nebraska. The state building division may provide that a deed of sale include restrictions on the building or land to ensure that the use and appearance of the building or land remain compatible with any adjacent state-owned property.

(d) Except as otherwise provided in subsection (4) of this section, the proceeds of the sale or lease shall be remitted to the State Treasurer for credit to the Vacant Building and Excess Land Cash Fund unless the state agency formerly responsible for the building or land certifies to the state building division that the building or land was purchased in part or in total from cash, federal, or revolving funds, in which event, after the costs of selling or leasing the building or land are deducted from the proceeds of the sale or lease and such amount is credited to the fund, the remaining proceeds of the sale or lease shall be credited to the cash, federal, or revolving fund in the percentage used in originally purchasing the building or land.

(4) Any state-owned military property, including any armories considered surplus property, shall be sold by such method as is to the best advantage of the State of Nebraska, including auction, sealed bid, or public sale, and if necessary, by private sale, but in all situations only after notice of the property sale is publicly advertised on at least two separate occasions in the newspaper with the largest circulation in the county where the surplus property is located and not less than thirty days prior to the sale of the property, and pursuant to section 72-816, all proceeds from the sale of the property, less maintenance expenses pending the sale and selling expenses, but including investment income on the sale proceeds of the property, shall be promptly transferred from the Vacant Building and Excess Land Cash Fund to the General Fund by the State Building Administrator.

(5) The state building division shall be responsible for the maintenance of the building or land if maintenance is ordered by the committee and shall be responsible for maintenance of the building or land pending sale or lease of the building or land.

(6) Land at the Hastings Regional Center determined by the committee to be excess shall be sold by such method as is to the best advantage of the State of

Nebraska, including auction, sealed bid, or public sale and, if necessary, by private sale. The sale of land shall only occur after notice of the sale is publicly advertised on at least two separate occasions in the newspaper with the largest circulation in the county where the land is located and not less than thirty days prior to the sale of the land. The proceeds from the sale of the land, less maintenance expenses pending the sale and selling expenses, but including investment income on the sale proceeds, shall be promptly transferred from the Vacant Building and Excess Land Cash Fund by the State Treasurer as follows:

(a) First, not exceeding five million three hundred seven thousand dollars to the General Fund; and

(b) Second, not exceeding three million dollars of available proceeds remaining to the Nebraska Capital Construction Fund.

Source: Laws 1988, LB 1143, § 5; Laws 1989, LB 18, § 6; Laws 1990, LB 830, § 5; Laws 1992, LB 1241, § 10; Laws 2000, LB 1216, § 21; Laws 2003, LB 403, § 6; Laws 2010, LB722, § 2; Laws 2013, LB199, § 30.

Cross References

Nebraska Real Estate License Act, see section 81-885.

ARTICLE 10 BUILDING FUNDS

Section

72-1001. Nebraska Capital Construction Fund; created; use; investment.

72-1001 Nebraska Capital Construction Fund; created; use; investment.

The Nebraska Capital Construction Fund is created. The fund shall consist of revenue and transfers credited to the fund as authorized by law. Money shall be appropriated from the fund to state agencies for making payments on projects as determined by the Legislature, including, but not limited to, purchases of land, structural improvements to land, acquisition of buildings, construction of buildings, including architectural and engineering costs, replacement of or major repairs to structural improvements to land or buildings, additions to existing structures, remodeling of buildings, and acquisition of equipment and furnishings of new or remodeled buildings. The fund shall be administered by the State Treasurer as a multiple-agency-use fund and appropriated to state agencies as determined by the Legislature. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The State Treasurer shall transfer four million five hundred seventy-four thousand four hundred sixty-six dollars from the Nebraska Capital Construction Fund to the General Fund on or before June 30, 2010, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

Source: Laws 2005, LB 426, § 1; Laws 2009, First Spec. Sess., LB2, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 12

INVESTMENT OF STATE FUNDS

(a) NEBRASKA STATE FUNDS INVESTMENT ACT

Section

- 72-1243. State investment officer; investment and reinvestment of funds; duties; council; analysis required; plan; contents.
- 72-1246.06. Repealed. Laws 2011, LB 303, § 1.
- 72-1246.07. Repealed. Laws 2011, LB 303, § 1.
- 72-1246.08. Repealed. Laws 2011, LB 303, § 1.
- 72-1255. Investment transactions; Auditor of Public Accounts; postaudits; report.

(b) NEBRASKA CAPITAL EXPANSION ACT

- 72-1263. State investment officer; time deposit open account; conditions.

(d) REVIEW OF NEBRASKA INVESTMENT COUNCIL

- 72-1278. Nebraska Investment Council; comprehensive review of council; contract.

(a) NEBRASKA STATE FUNDS INVESTMENT ACT

72-1243 State investment officer; investment and reinvestment of funds; duties; council; analysis required; plan; contents.

(1) Except as otherwise specifically provided by law, the state investment officer shall direct the investment and reinvestment of money in all state funds not currently needed and all funds described in section 83-133 and order the purchase, sale, or exchange of securities for such funds. He or she shall notify the State Treasurer of any payment, receipt, or delivery that may be required as a result of any investment decision, which notification shall be the authorization and direction for the State Treasurer to make such disbursement, receipt, or delivery from the appropriate fund.

(2) The council shall have an analysis made of the investment returns that have been achieved on the assets of each retirement system administered by the Public Employees Retirement Board as provided in section 84-1503. By March 31 of each year, the analysis shall be presented to the board and the Nebraska Retirement Systems Committee of the Legislature. The analysis shall be prepared by an independent organization which has demonstrated expertise to perform this type of analysis and for which there exists no conflict of interest in the analysis being provided. The analysis may be waived by the council for any retirement system with assets of less than one million dollars.

(3) By March 31 of each year, the council shall prepare a written plan of action and shall present such plan to the Nebraska Retirement Systems Committee of the Legislature at a public hearing. The plan shall include, but not be limited to, the council's investment portfolios, investment strategies, the duties and limitations of the state investment officer, and an organizational structure of the council's office.

Source: Laws 1969, c. 584, § 7, p. 2351; Laws 1971, LB 53, § 7; Laws 1985, LB 335, § 2; Laws 1991, LB 549, § 21; Laws 1996, LB 847, § 24; Laws 2005, LB 503, § 7; Laws 2011, LB509, § 14.

72-1246.06 Repealed. Laws 2011, LB 303, § 1.

72-1246.07 Repealed. Laws 2011, LB 303, § 1.

72-1246.08 Repealed. Laws 2011, LB 303, § 1.**72-1255 Investment transactions; Auditor of Public Accounts; postaudits; report.**

The Auditor of Public Accounts shall conduct, at such time as he or she determines necessary, postaudits of the investment transactions provided for in the Nebraska State Funds Investment Act and shall submit annually a report of his or her findings to the Governor and the state investment officer.

Source: Laws 1969, c. 584, § 19, p. 2355; Laws 1997, LB 4, § 4; Laws 2011, LB337, § 5.

(b) NEBRASKA CAPITAL EXPANSION ACT**72-1263 State investment officer; time deposit open account; conditions.**

Except as provided in section 72-1264, the state investment officer shall, out of funds available for investment, initially cause to be offered to all banks, capital stock financial institutions, and qualifying mutual financial institutions in this state a time deposit open account in the amount of one million dollars, except that the minimum amount that any bank, capital stock financial institution, or qualifying mutual financial institution may accept is the amount of one hundred thousand dollars. Such deposit shall be available at any investment date to such banks, capital stock financial institutions, or qualifying mutual financial institutions as are willing to meet the rate and other requirements set forth in the Nebraska Capital Expansion Act and make application therefor. No deposit shall be made when doing so would violate a fiduciary obligation of the state or section 72-1268.07. To the extent that the total amount of funds initially offered to all banks, capital stock financial institutions, and qualifying mutual financial institutions is not accepted by such banks, capital stock financial institutions, and qualifying mutual financial institutions, the balance of such funds shall be immediately reoffered to any banks, capital stock financial institutions, and qualifying mutual financial institutions desiring additional funds in an amount not to exceed each bank's, capital stock financial institution's, or qualifying mutual financial institution's pro rata share of the remaining funds, or five million dollars for each bank, capital stock financial institution, or qualifying mutual financial institution, whichever is less. The reoffered funds shall be made available to such banks, capital stock financial institutions, and qualifying mutual financial institutions as are willing to meet the rate and other requirements set forth in the Nebraska Capital Expansion Act. All funds not investable under this section shall be invested as provided by section 72-1246. No one bank, capital stock financial institution, or qualifying mutual financial institution may receive for deposit a sum of more than six million dollars.

Source: Laws 1978, LB 258, § 3; Laws 1985, LB 614, § 2; Laws 1990, LB 1146, § 3; Laws 2000, LB 932, § 35; Laws 2002, LB 957, § 26; Laws 2003, LB 175, § 4; Laws 2014, LB759, § 20.
Effective date July 18, 2014.

(d) REVIEW OF NEBRASKA INVESTMENT COUNCIL**72-1278 Nebraska Investment Council; comprehensive review of council; contract.**

The Nebraska Investment Council shall enter into a contract with a qualified independent organization familiar with similar state investment offices to complete a comprehensive review of the current statutory, regulatory, and organizational situation of the council, review best practices of similar state investment offices, and make recommendations to the council, the Governor, and the Legislature for changes needed to ensure that the council has adequate authority to independently execute its fiduciary responsibilities to the members and beneficiaries of the retirement systems and the Nebraska educational savings plan trust and the residents of Nebraska with regards to other state funds. The recommendations submitted to the Legislature shall be submitted electronically.

Source: Laws 2008, LB1147, § 18; Laws 2012, LB782, § 131.

ARTICLE 17 SMALL BUSINESS INCUBATORS

Section
72-1710. Community board; report; contents.

72-1710 Community board; report; contents.

A community board shall report electronically at least annually to the Legislature on the activities of the community board and the center. The report shall include, at minimum, the name of each applicant whose application the community board rejects, together with the reasons for the rejection, and the name of each applicant whose application the community board favorably evaluates.

Source: Laws 1990, LB 409, § 10; Laws 2012, LB782, § 132.

ARTICLE 18 JOSLYN CASTLE

Section
72-1801. Repealed. Laws 2012, LB 707, § 1.
72-1802. Repealed. Laws 2012, LB 707, § 1.

72-1801 Repealed. Laws 2012, LB 707, § 1.

72-1802 Repealed. Laws 2012, LB 707, § 1.

ARTICLE 20 NIOBRARA RIVER CORRIDOR

Section
72-2009. Niobrara Council Fund; created; use; investment.

72-2009 Niobrara Council Fund; created; use; investment.

The Niobrara Council Fund is created. The fund shall be administered by the Niobrara Council. The council may accept any private or public funds to carry out its work and such funds shall be remitted to the State Treasurer for credit to the fund. The fund shall consist of such funds and legislative appropriations made to the council. Transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2011. Any money in the

Niobrara Council 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 1234, § 5; Laws 2009, First Spec. Sess., LB3, § 49.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 22

NEBRASKA STATE CAPITOL PRESERVATION AND RESTORATION ACT

Section

72-2211. Capitol Restoration Cash Fund; created; use; investment.

72-2211 Capitol Restoration Cash Fund; created; use; investment.

The Capitol Restoration Cash Fund is created. The administrator shall administer the fund, which shall consist of money received from the sale of material, rental revenue, private donations, and public donations. The fund shall be used to finance projects to restore the State Capitol and capitol grounds to their original condition, to purchase and conserve items to be added to the Nebraska Capitol Collections housed in the State Capitol, and to produce promotional material concerning the State Capitol, its grounds, and the Nebraska State Capitol Environs District, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Such expenditures shall be prescribed by the administrator and approved by the commission. Any money in the Capitol Restoration Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2004, LB 439, § 11; Laws 2009, First Spec. Sess., LB3, § 50.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 25

NEBRASKA INCENTIVES FUND

Section

72-2501. Nebraska Incentives Fund; created; investment.

72-2501 Nebraska Incentives Fund; created; investment.

The Nebraska Incentives Fund is created. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Incentives Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2008, LB914, § 24; Laws 2009, First Spec. Sess., LB3, § 51.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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



CHAPTER 73

PUBLIC LETTINGS AND CONTRACTS

Article.

1. Public Lettings. 73-107.
3. Contracts for Personal Services. 73-305, 73-307.
4. Health and Human Services Contracts. 73-401.
5. State Contracts for Services. 73-501 to 73-510.
6. Transparency in Government Procurement Act. 73-601 to 73-605.

ARTICLE 1

PUBLIC LETTINGS

Section

73-107. Resident disabled veteran or business located in designated enterprise zone; preference; contract not in compliance with section; null and void.

73-107 Resident disabled veteran or business located in designated enterprise zone; preference; contract not in compliance with section; null and void.

(1) When a state contract is to be awarded to the lowest responsible bidder, a resident disabled veteran or a business located in a designated enterprise zone under the Enterprise Zone Act shall be allowed a preference over any other resident or nonresident bidder if all other factors are equal.

(2) For purposes of this section, resident disabled veteran means any person (a) who resides in the State of Nebraska, who served in the United States Armed Forces, including any reserve component or the National Guard, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), and who possesses a disability rating letter issued by the United States Department of Veterans Affairs establishing a service-connected disability or a disability determination from the United States Department of Defense and (b)(i) who owns and controls a business or, in the case of a publicly owned business, more than fifty percent of the stock is owned by one or more persons described in subdivision (a) of this subsection and (ii) the management and daily business operations of the business are controlled by one or more persons described in subdivision (a) of this subsection.

(3) Any contract entered into without compliance with this section shall be null and void.

Source: Laws 2013, LB224, § 1.

Cross References

Enterprise Zone Act, see section 13-2101.01.

ARTICLE 3

CONTRACTS FOR PERSONAL SERVICES

Section

- 73-305. Director of Administrative Services; report required.
73-307. Sections; applicability; how construed.

73-305 Director of Administrative Services; report required.

The Director of Administrative Services shall, within forty-five days after receipt of the information described in sections 73-302 and 73-303 from the state agency, prepare a report detailing why the proposed contract was approved or disapproved. The report shall be delivered electronically to the chairperson of the Appropriations Committee of the Legislature and the Legislative Fiscal Analyst.

Source: Laws 1995, LB 519, § 9; Laws 2012, LB782, § 133.

73-307 Sections; applicability; how construed.

Sections 73-301 to 73-306 shall not apply to the Nebraska Consultants' Competitive Negotiation Act or section 57-1503.

Sections 73-301 to 73-306 shall not be construed to apply to renewals of contracts already approved pursuant to or not subject to such sections, to amendments to such contracts, or to renewals of such amendments unless the amendments would directly cause or result in the replacement by the private entity of additional permanent state employees or positions greater than the replacement caused by the original contract.

Source: Laws 1995, LB 519, § 11; Laws 2011, First Spec. Sess., LB4, § 4.

Cross References

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

ARTICLE 4

HEALTH AND HUMAN SERVICES CONTRACTS

Section

73-401. Contract with state agency; Public Counsel; jurisdiction.

73-401 Contract with state agency; Public Counsel; jurisdiction.

Except for long-term care facilities subject to the jurisdiction of the state long-term care ombudsman pursuant to the Long-Term Care Ombudsman Act, the contracting agency shall ensure that any contract which a state agency enters into or renews which agrees that a corporation, partnership, business, firm, governmental entity, or person shall provide health and human services to individuals or service delivery, service coordination, or case management on behalf of the State of Nebraska shall contain a clause requiring the corporation, partnership, business, firm, governmental entity, or person to submit to the jurisdiction of the Public Counsel under sections 81-8,240 to 81-8,254 with respect to the provision of services under the contract.

Source: Laws 1997, LB 622, § 120; Laws 2012, LB821, § 40.

Cross References

Long-Term Care Ombudsman Act, see section 81-2237.

ARTICLE 5
STATE CONTRACTS FOR SERVICES

Section

- 73-501. Purposes of sections.
73-502. Terms, defined.
73-503. Documentation; requirements.
73-504. Competitive bidding requirements.
73-506. State agency contracts for services; requirements.
73-507. Exceptions.
73-508. Preapproval; required; when.
73-509. Pre-process; required; when; procedure.
73-510. New proposed contract in excess of fifteen million dollars; submission of contract and proof-of-need analysis; information required; division; duties; state agency; filing required.

73-501 Purposes of sections.

The purposes of sections 73-501 to 73-510 are to establish a standardized, open, and fair process for selection of contractual services, using performance-based contracting methods to the maximum extent practicable, and to create an accurate reporting of expended funds for contractual services. This process shall promote a standardized method of selection for state contracts for services, assuring a fair assessment of qualifications and capabilities for project completion. There shall also be an accountable, efficient reporting method of expenditures for these services.

Source: Laws 2003, LB 626, § 1; Laws 2012, LB858, § 5.

73-502 Terms, defined.

For purposes of sections 73-501 to 73-510:

(1) Contract for services means any contract that directly engages the time or effort of an independent contractor whose purpose is to perform an identifiable task, study, or report rather than to furnish an end item of supply, goods, equipment, or material;

(2) Division means the materiel division of the Department of Administrative Services;

(3) Emergency means necessary to meet an urgent or unexpected requirement or when health and public safety or the conservation of public resources is at risk;

(4) Occasional means seasonal, irregular, or fluctuating in nature;

(5) Sole source means of such a unique nature that the contractor selected is clearly and justifiably the only practicable source to provide the service. Determination that the contractor selected is justifiably the sole source is based on either the uniqueness of the service or sole availability at the location required;

(6) State agency means any agency, board, or commission of this state other than the University of Nebraska, the Nebraska state colleges, the courts, the Legislature, or any officer or state agency established by the Constitution of Nebraska; and

(7) Temporary means a finite period of time with respect to a specific task or result relating to a contract for services.

Source: Laws 2003, LB 626, § 2; Laws 2012, LB858, § 6.

73-503 Documentation; requirements.

(1) All state agencies shall process and document all contracts for services through the state accounting system. The Director of Administrative Services shall specify the format and type of information for state agencies to provide and approve any alternatives to such formats. All state agencies shall enter the information on new contracts for services and amendments to existing contracts for services. State agency directors shall ensure that contracts for services are coded appropriately into the state accounting system.

(2) The requirements of this section also apply to the courts, the Legislature, and any officer or state agency established by the Constitution of Nebraska, but not to the University of Nebraska.

(3) The Nebraska state colleges shall document all contracts for services through the state accounting system.

(4) The Director of Administrative Services shall establish a centralized data base, either through the state accounting system or through an alternative system, which specifically identifies where a copy of each contract for services may be found.

Source: Laws 2003, LB 626, § 3; Laws 2012, LB858, § 7.

73-504 Competitive bidding requirements.

Except as provided in section 73-507:

(1) All state agencies shall comply with the review and competitive bidding processes provided in this section for contracts for services. Unless otherwise exempt, no state agency shall expend funds for contracts for services without complying with this section;

(2) All proposed state agency contracts for services in excess of fifty thousand dollars shall be bid in the manner prescribed by the division procurement manual or a process approved by the Director of Administrative Services. Bidding may be performed at the state agency level or by the division. Any state agency may request that the division conduct the competitive bidding process;

(3) If the bidding process is at the state agency level, then state agency directors shall ensure that bid documents for each contract for services in excess of fifty thousand dollars are previewed by the division and that any changes to the proposed contract that differ from the bid documents in the proposed contract for services are reviewed by the division before signature by the parties;

(4) State agency directors, in cooperation with the division, shall be responsible for appropriate public notice of an impending contractual services project in excess of fifty thousand dollars in accordance with the division's procurement manual and sections 73-501 to 73-510; and

(5) State agency directors, in cooperation with the division, shall be responsible for ensuring that a request for contractual services in excess of fifty

thousand dollars is filed with the division for dissemination or web site access to vendors interested in competing for contracts for services.

Source: Laws 2003, LB 626, § 4; Laws 2012, LB858, § 8.

73-506 State agency contracts for services; requirements.

State agency contracts for services shall be subject to the following requirements:

(1) Payments shall be made when contractual deliverables are received or in accordance with specific contractual terms and conditions;

(2) State agencies shall not enter into contracts for services with an unspecified or unlimited duration;

(3) State agencies shall not structure contracts for services to avoid any of the requirements of sections 73-501 to 73-510; and

(4) State agencies shall not enter into contracts for services in excess of fifteen million dollars unless the state agency has complied with section 73-510.

Source: Laws 2003, LB 626, § 6; Laws 2012, LB858, § 9.

73-507 Exceptions.

(1) Subject to review by the Director of Administrative Services, the division shall provide procedures to grant limited exceptions from sections 73-504, 73-508, and 73-509 for:

(a) Sole source contracts, emergency contracts, and contracts for services when the price has been established by the federal General Services Administration or competitively bid by another state or group of states, a group of states and any political subdivision of any other state, or a cooperative purchasing organization on behalf of a group of states; and

(b) Other circumstances or specific contracts when any of the requirements of sections 73-504, 73-508, and 73-509 are not appropriate for or are not compatible with the circumstances or contract. The division shall provide a written rationale which shall be kept on file when granting an exception under this subdivision.

(2) The following types of contracts for services are not subject to sections 73-504, 73-508, 73-509, and 73-510:

(a) Contracts for services subject to the Nebraska Consultants' Competitive Negotiation Act;

(b) Contracts for services subject to federal law, regulation, or policy or state statute, under which a state agency is required to use a different selection process or to contract with an identified contractor or type of contractor;

(c) Contracts for professional legal services and services of expert witnesses, hearing officers, or administrative law judges retained by state agencies for administrative or court proceedings;

(d) Contracts involving state or federal financial assistance passed through by a state agency to a political subdivision;

(e) Contracts with a value of fifteen million dollars or less with direct providers of medical, behavioral, or developmental health services, child care, or child welfare services to an individual;

(f) Agreements for services to be performed for a state agency by another state or local government agency or contracts made by a state agency with a local government agency for the direct provision of services to the public;

(g) Agreements for services between a state agency and the University of Nebraska, the Nebraska state colleges, the courts, the Legislature, or other officers or state agencies established by the Constitution of Nebraska;

(h) Department of Insurance contracts for financial or actuarial examination, for rehabilitation, conservation, reorganization, or liquidation of licensees, and for professional services related to residual pools or excess funds under the agency's control;

(i) Department of Roads contracts for all road and bridge projects;

(j) Nebraska Investment Council contracts; and

(k) Contracts under section 57-1503.

Source: Laws 2003, LB 626, § 7; Laws 2011, First Spec. Sess., LB4, § 5; Laws 2012, LB858, § 10; Laws 2014, LB974, § 1.
Effective date April 3, 2014.

Cross References

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

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 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 state 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 state 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; Laws 2012, LB858, § 11.

73-509 Pre-process; required; when; procedure.

Each proposed contract for services in excess of fifty thousand dollars which requests services that are now performed or have, within the year immediately preceding the date of the proposed contract, been performed by a state employee covered by the classified personnel system or by any labor contract shall use a pre-process prescribed by the division. The pre-process shall include evaluation of the displacement of the employee of the state agency or position held by the employee of the state agency within the preceding year and of the disadvantages of such a contract for services against the expected advantages, whether economic or otherwise. Documentation of each evaluation shall be maintained in the contract file by the state agency.

Source: Laws 2003, LB 626, § 9; Laws 2012, LB858, § 12.

73-510 New proposed contract in excess of fifteen million dollars; submission of contract and proof-of-need analysis; information required; division; duties; state agency; filing required.

(1) A state agency shall not enter into a new proposed contract for services in excess of fifteen million dollars until the state agency has submitted to the division a copy of the proposed contract and proof-of-need analysis described in this section and has subsequently received certification from the division to enter into the contract.

(2) The proof-of-need analysis shall require state agencies to provide the following information:

- (a) A description of the service that is the subject of the proposed contract;
- (b) The reason for purchase of the service rather than the use or hiring of state employees, including, but not limited to, whether there is an administrative restriction on hiring additional state employees;
- (c) A review of any long-term actual cost savings of the contract and an explanation of the analysis used to determine such savings;
- (d) An explanation of the process by which the state agency will include adequate control mechanisms to ensure that the services are provided pursuant to the terms of the contract, including a description of the method by which the control mechanisms will ensure the quality of services provided by the contract;
- (e) Identification of the specific state agency employee who will monitor the contract for services for performance;
- (f) Identification and description of whether the service requested is temporary or occasional;
- (g) An assessment of the feasibility of alternatives within the state agency to contract for performance of the services;
- (h) A justification for entering into the contract for services if:
 - (i) The proposed contract will not result in cost savings to the state; and
 - (ii) The public's interest in having the particular service performed directly by the state agency exceeds the public's interest in the proposed contract;
- (i) Any federal requirements that the service be provided by a person other than the state agency;
- (j) Demonstration by the state agency that it has taken formal and positive steps to consider alternatives to such contract, including reorganization, reevaluation of services, and reevaluation of performance; and
- (k) A description of any relevant legal issues, including barriers to contracting for the service or requirements that the state agency contract for the service.

(3) The division shall certify receipt of a proof-of-need analysis and shall report its receipt of the proof-of-need analysis to the state agency no more than thirty days after receiving the analysis. Certification of the proof-of-need analysis means that all information required by this section has been provided to the division by the state agency. If the division certifies the analysis, the state agency may enter into the proposed contract. If the division does not certify the analysis, it shall inform the state agency of the additional information required.

(4) If the division certifies a proof-of-need analysis pursuant to this section, the state agency shall file the proposed contract, proof-of-need analysis, and proof of certification with the Legislative Fiscal Analyst.

Source: Laws 2012, LB858, § 13; Laws 2013, LB563, § 1.

ARTICLE 6

TRANSPARENCY IN GOVERNMENT PROCUREMENT ACT

Section

73-601. Act, how cited.

73-602. Legislative findings and declaration.

73-603. Department of Administrative Services; report; contents.

73-604. Certain contracts; contractor; provide information.

73-605. Act; applicability.

73-601 Act, how cited.

Sections 73-601 to 73-605 shall be known and may be cited as the Transparency in Government Procurement Act.

Source: Laws 2014, LB371, § 1.

Effective date March 27, 2014.

73-602 Legislative findings and declaration.

(1) The Legislature finds that:

(a) Transparency in public procurement is an important tool to deter corruption and to maintain the public's trust in government contracting;

(b) Taxpayers deserve to know how and where their tax dollars are being spent;

(c) The economy and general welfare of this state and its people and the economy and general welfare of the United States are inseparably linked to the preservation and development of manufacturing industries in this state, as well as all the other states of this nation; and

(d) Recognizing such link, it should be the policy of this state that, whenever possible, taxpayer dollars be reinvested with its individual and employer taxpayers in order to foster job retention and growth and to ensure a broad and healthy tax base for future investments vital to the state's infrastructure.

(2) The Legislature declares that it shall be the policy of this state that the Department of Administrative Services shall quantify the portion of its procurement spending that is reinvested with taxpayers in this state and the nation.

Source: Laws 2014, LB371, § 2.

Effective date March 27, 2014.

73-603 Department of Administrative Services; report; contents.

(1) The Department of Administrative Services shall create an annual report that includes:

(a) The total number and value of contracts awarded by the department;

(b) The total number and value of contracts awarded by the department to contractors within this state;

(c) The total number and value of contracts awarded by the department to foreign contractors; and

(d) The total number of contracts awarded by the department for which a preference was given under section 73-101.01.

(2) The first such report created pursuant to subsection (1) of this section shall be submitted to the Governor and the Legislature on or before September

1, 2015, and shall include the information specified in such subsection from FY2014-15. Subsequent reports shall be submitted on or before September 1 each year thereafter and shall include the required information from the most recent fiscal year ending prior to such date. The reports submitted to the Legislature and the Governor shall be submitted electronically. Each annual report shall be made available to the public through publication on the department's web site on or before September 1 of each year.

Source: Laws 2014, LB371, § 3.
Effective date March 27, 2014.

73-604 Certain contracts; contractor; provide information.

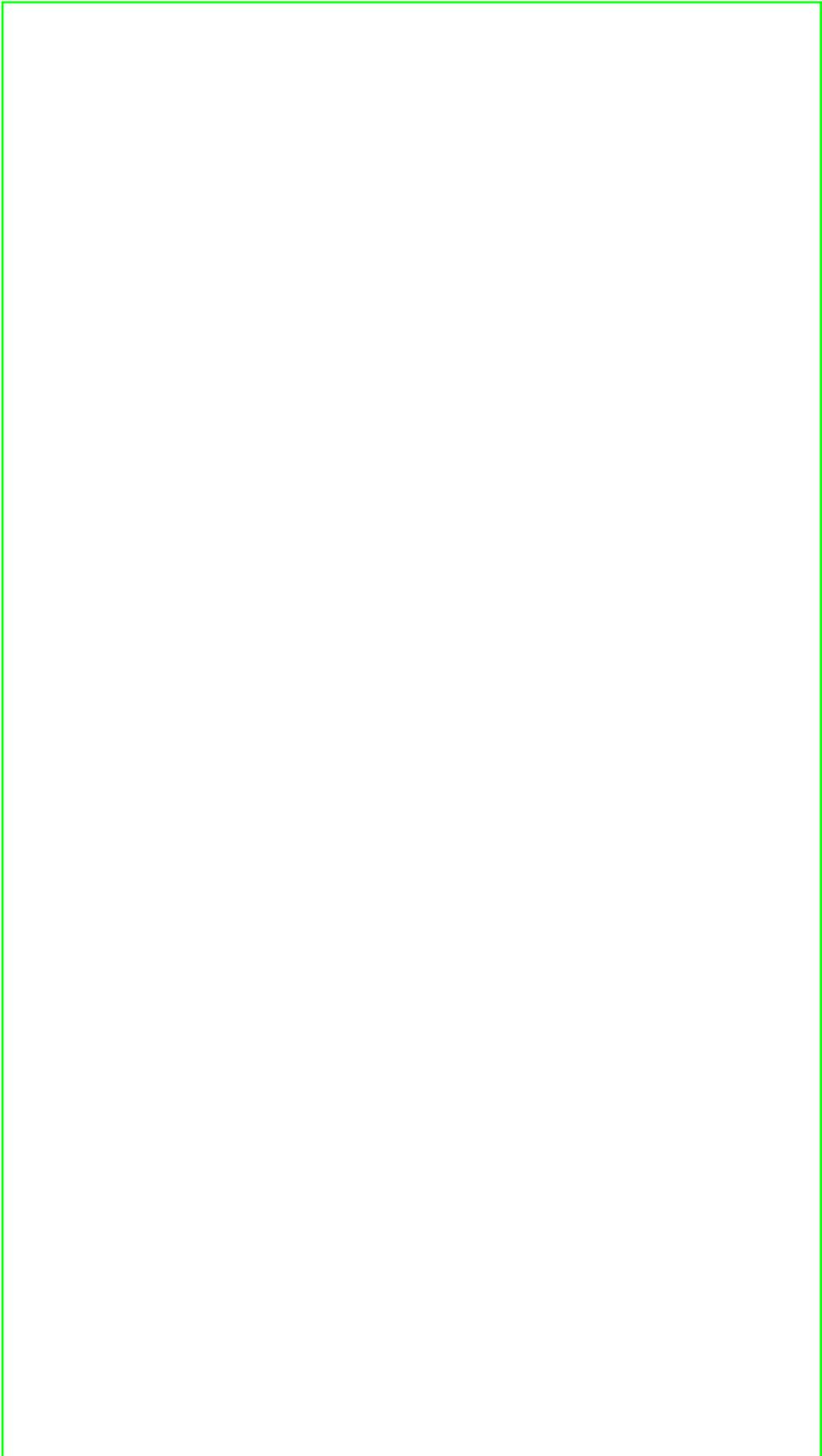
Beginning on July 1, 2014, each contract awarded by the Department of Administrative Services shall require that the contractors provide to the department any and all information needed for compliance with section 73-603.

Source: Laws 2014, LB371, § 4.
Effective date March 27, 2014.

73-605 Act; applicability.

The Transparency in Government Procurement Act applies only to contracts awarded by the Department of Administrative Services on and after July 1, 2014, and does not apply to the Office of the Nebraska Capitol Commission.

Source: Laws 2014, LB371, § 5.
Effective date March 27, 2014.



CHAPTER 74

RAILROADS

Article.

14. Light-Density Rail Lines. 74-1401 to 74-1429.

ARTICLE 14

LIGHT-DENSITY RAIL LINES

Section

74-1401. Repealed. Laws 2011, LB 259, § 5.
 74-1402. Repealed. Laws 2011, LB 259, § 5.
 74-1402.01. Repealed. Laws 2011, LB 259, § 5.
 74-1403. Repealed. Laws 2011, LB 259, § 5.
 74-1404. Repealed. Laws 2011, LB 259, § 5.
 74-1405. Repealed. Laws 2011, LB 259, § 5.
 74-1405.01. Repealed. Laws 2011, LB 259, § 5.
 74-1405.02. Repealed. Laws 2011, LB 259, § 5.
 74-1405.03. Repealed. Laws 2011, LB 259, § 5.
 74-1406. Repealed. Laws 2011, LB 259, § 5.
 74-1407.01. Repealed. Laws 2011, LB 259, § 5.
 74-1408. Repealed. Laws 2011, LB 259, § 5.
 74-1410. Repealed. Laws 2011, LB 259, § 5.
 74-1410.01. Repealed. Laws 2011, LB 259, § 5.
 74-1411. Repealed. Laws 2011, LB 259, § 5.
 74-1411.01. Repealed. Laws 2011, LB 259, § 5.
 74-1412. Repealed. Laws 2011, LB 259, § 5.
 74-1412.01. Repealed. Laws 2011, LB 259, § 5.
 74-1413. Repealed. Laws 2011, LB 259, § 5.
 74-1414. Repealed. Laws 2011, LB 259, § 5.
 74-1415. Repealed. Laws 2011, LB 259, § 5.
 74-1415.01. Repealed. Laws 2011, LB 259, § 5.
 74-1415.03. Repealed. Laws 2011, LB 259, § 5.
 74-1415.04. Repealed. Laws 2011, LB 259, § 5.
 74-1415.05. Repealed. Laws 2011, LB 259, § 5.
 74-1415.06. Repealed. Laws 2011, LB 259, § 5.
 74-1419.02. Repealed. Laws 2011, LB 259, § 5.
 74-1420. Repealed. Laws 2011, LB 259, § 5.
 74-1420.01. Repealed. Laws 2011, LB 259, § 5.
 74-1420.02. Repealed. Laws 2011, LB 259, § 5.
 74-1420.03. Repealed. Laws 2011, LB 259, § 5.
 74-1427. Political subdivision; expend local tax funds; election; procedure.
 74-1428.01. Repealed. Laws 2011, LB 259, § 5.
 74-1428.02. Repealed. Laws 2011, LB 259, § 5.
 74-1428.03. Repealed. Laws 2011, LB 259, § 5.
 74-1429. Repealed. Laws 2011, LB 259, § 5.

74-1401 Repealed. Laws 2011, LB 259, § 5.

74-1402 Repealed. Laws 2011, LB 259, § 5.

74-1402.01 Repealed. Laws 2011, LB 259, § 5.

74-1403 Repealed. Laws 2011, LB 259, § 5.

74-1404 Repealed. Laws 2011, LB 259, § 5.

74-1405 Repealed. Laws 2011, LB 259, § 5.

74-1405.01 Repealed. Laws 2011, LB 259, § 5.

74-1405.02 Repealed. Laws 2011, LB 259, § 5.

74-1405.03 Repealed. Laws 2011, LB 259, § 5.

74-1406 Repealed. Laws 2011, LB 259, § 5.

74-1407.01 Repealed. Laws 2011, LB 259, § 5.

74-1408 Repealed. Laws 2011, LB 259, § 5.

74-1410 Repealed. Laws 2011, LB 259, § 5.

74-1410.01 Repealed. Laws 2011, LB 259, § 5.

74-1411 Repealed. Laws 2011, LB 259, § 5.

74-1411.01 Repealed. Laws 2011, LB 259, § 5.

74-1412 Repealed. Laws 2011, LB 259, § 5.

74-1412.01 Repealed. Laws 2011, LB 259, § 5.

74-1413 Repealed. Laws 2011, LB 259, § 5.

74-1414 Repealed. Laws 2011, LB 259, § 5.

74-1415 Repealed. Laws 2011, LB 259, § 5.

74-1415.01 Repealed. Laws 2011, LB 259, § 5.

74-1415.03 Repealed. Laws 2011, LB 259, § 5.

74-1415.04 Repealed. Laws 2011, LB 259, § 5.

74-1415.05 Repealed. Laws 2011, LB 259, § 5.

74-1415.06 Repealed. Laws 2011, LB 259, § 5.

74-1419.02 Repealed. Laws 2011, LB 259, § 5.

74-1420 Repealed. Laws 2011, LB 259, § 5.

74-1420.01 Repealed. Laws 2011, LB 259, § 5.

74-1420.02 Repealed. Laws 2011, LB 259, § 5.

74-1420.03 Repealed. Laws 2011, LB 259, § 5.

74-1427 Political subdivision; expend local tax funds; election; procedure.

(1) If the governing body of a political subdivision determines that it is necessary or beneficial for the vitality of such political subdivision to expend local tax funds for rehabilitation or improvement of a light-density rail line or rail facility construction, including the issuance of bonds, the governing body shall by resolution place the proposition for such expenditure or bond issue on

the general or primary election ballot or in odd-numbered years only call for a special election in such political subdivision for the purpose of approving such expenditure of local tax funds.

(2) The resolution calling for the election and the election notice shall show the proposed purpose for which such local tax funds will be expended and the amount of money sought.

(3) Notice of the election shall state the date the election is to be held and the hours the polls will be open. Such notice shall be published in a newspaper that is published in or of general circulation in such political subdivision at least once each week for three weeks prior to such election. If no such newspaper exists, notice shall be posted in at least three public places in the political subdivision for at least three weeks prior to such election.

(4) The proposition appearing on the ballot in any election shall state the purpose for which such local tax funds will be spent, the amount of local tax funds to be so expended, and the source from which the revenue will be raised. Such proposition shall be adopted if approved by a majority of those voting in such election.

(5) If a special election is called, the governing body shall prescribe the form of the ballot to be used.

(6) For purposes of this section:

(a) Facility means the track, ties, roadbed, and related structures, including terminals, team tracks and appurtenances, bridges, tunnels, and other structures used or usable for rail service operations;

(b) Light-density rail line means any rail line classified as a light-density line by the United States Department of Transportation;

(c) Rail facility construction means the construction of rail or rail-related facilities, including new connections between two or more existing lines, intermodal freight terminals, sidings, and relocation of existing lines, for the purpose of improving the quality and efficiency of rail freight service; and

(d) Rehabilitation or improvement means replacing, repairing, or upgrading, to the extent necessary to permit adequate and efficient rail freight service, facilities needed to provide service on a rail line.

Source: Laws 1980, LB 507, § 27; Laws 1991, LB 783, § 28; Laws 1996, LB 463, § 30; Laws 2011, LB259, § 3.

74-1428.01 Repealed. Laws 2011, LB 259, § 5.

74-1428.02 Repealed. Laws 2011, LB 259, § 5.

74-1428.03 Repealed. Laws 2011, LB 259, § 5.

74-1429 Repealed. Laws 2011, LB 259, § 5.



CHAPTER 75

PUBLIC SERVICE COMMISSION

Article.

1. Organization and Composition, Regulatory Scope, and Procedure. 75-101.01 to 75-159.
3. Motor Carriers.
 - (a) Intrastate Motor Carriers. 75-302 to 75-311.
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ARTICLE 1

ORGANIZATION AND COMPOSITION, REGULATORY SCOPE, AND PROCEDURE

Section

- 75-101.01. Public Service Commission; districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.
- 75-101.02. Public Service Commission; districts; population figures and maps; basis.
- 75-109.01. Jurisdiction.
- 75-110.01. Application or petition for authority or relief; procedures.
- 75-112. Commissioners and examiners; powers; certification of official acts.
- 75-118. Commission; duties.
- 75-128. Hearings; when held; filing fee.
- 75-129. Sessions and hearings; when and where held.
- 75-134. Commission order; requirements; when effective; rate order under State Natural Gas Regulation Act; appeal; stay enforcement.
- 75-134.02. Motion for reconsideration.
- 75-136. Orders; right to appeal; manner and time; advancement of appeal of rate order under State Natural Gas Regulation Act.
- 75-139. Rate order; appeal; when effective; supersedeas bond; effect; applicability of section.
- 75-156. Civil penalty; procedure; order; appeal.
- 75-159. Public Service Commission Housing and Recreational Vehicle Cash Fund; created; use; investment.

75-101.01 Public Service Commission; districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.

(1) Based on the 2010 Census of Population by the United States Department of Commerce, Bureau of the Census, the State of Nebraska is hereby divided into five public service commissioner districts, and each public service commissioner district shall be entitled to one member.

(2) The numbers and boundaries of the districts are designated and established by maps identified and labeled as maps PSC11-1, PSC11-2, PSC11-3, PSC11-4, and PSC11-5, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2011, LB700.

(3)(a) The Clerk of the Legislature shall transfer possession of the maps referred to in subsection (2) of this section to the Secretary of State on May 27, 2011.

(b) When questions of interpretation of district boundaries arise, the maps referred to in subsection (2) of this section in possession of the Secretary of State shall serve as the indication of the legislative intent in drawing the district boundaries.

(c) Each election commissioner or county clerk shall obtain copies of the maps referred to in subsection (2) of this section for the election commissioner's or clerk's county from the Secretary of State.

(d) The Secretary of State shall also have available for viewing on his or her web site the maps referred to in subsection (2) of this section identifying the boundaries for the districts.

Source: Laws 1963, c. 174, § 1, p. 596; Laws 1971, LB 955, § 1; Laws 1981, LB 551, § 1; R.S.1943, (1987), § 5-107; Laws 1991, LB 618, § 1; Laws 2001, LB 855, § 2; Laws 2011, LB700, § 1.

75-101.02 Public Service Commission; districts; population figures and maps; basis.

For purposes of section 75-101.01, the Legislature adopts the official population figures and maps from the 2010 Census Redistricting (Public Law 94-171) TIGER/Line Shapefiles published by the United States Department of Commerce, Bureau of the Census.

Source: Laws 1971, LB 955, § 2; Laws 1981, LB 551, § 2; R.S.1943, (1987), § 5-107.01; Laws 1991, LB 618, § 2; Laws 2001, LB 855, § 3; Laws 2011, LB700, § 2.

75-109.01 Jurisdiction.

Except as otherwise specifically provided by law, the Public Service Commission shall have jurisdiction, as prescribed, over the following subjects:

- (1) Common carriers, generally, pursuant to sections 75-101 to 75-158;
- (2) Grain pursuant to the Grain Dealer Act and the Grain Warehouse Act and sections 89-1,104 to 89-1,108;
- (3) Manufactured homes and recreational vehicles pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles;
- (4) Modular housing units pursuant to the Nebraska Uniform Standards for Modular Housing Units Act;
- (5) Motor carrier registration and safety pursuant to sections 75-301 to 75-322, 75-369.03, 75-370, and 75-371;
- (6) Pipeline carriers and rights-of-way pursuant to the Major Oil Pipeline Siting Act, the State Natural Gas Regulation Act, and sections 75-501 to 75-503. If the provisions of Chapter 75 are inconsistent with the provisions of the Major Oil Pipeline Siting Act, the provisions of the Major Oil Pipeline Siting Act control;
- (7) Railroad carrier safety pursuant to sections 74-918, 74-919, 74-1323, and 75-401 to 75-430;

(8) Telecommunications carriers pursuant to the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay Sys-

tem Act, the Telephone Consumer Slamming Prevention Act, and sections 86-574 to 86-580;

(9) Transmission lines and rights-of-way pursuant to sections 70-301 and 75-702 to 75-724;

(10) Water service pursuant to the Water Service Regulation Act; and

(11) Jurisdictional utilities governed by the State Natural Gas Regulation Act. If the provisions of Chapter 75 are inconsistent with the provisions of the State Natural Gas Regulation Act, the provisions of the State Natural Gas Regulation Act control.

Source: Laws 2002, LB 1105, § 482; Laws 2003, LB 790, § 63; Laws 2006, LB 1069, § 1; Laws 2006, LB 1249, § 12; Laws 2011, First Spec. Sess., LB1, § 14.

Cross References

Automatic Dialing-Announcing Devices Act, see section 86-236.

Emergency Telephone Communications Systems Act, see section 86-420.

Enhanced Wireless 911 Services Act, see section 86-442.

Grain Dealer Act, see section 75-901.

Grain Warehouse Act, see section 88-525.

Intrastate Pay-Per-Call Regulation Act, see section 86-258.

Major Oil Pipeline Siting Act, see section 57-1401.

Nebraska Telecommunications Regulation Act, see section 86-101.

Nebraska Telecommunications Universal Service Fund Act, see section 86-316.

Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.

State Natural Gas Regulation Act, see section 66-1801.

Telecommunications Relay System Act, see section 86-301.

Telephone Consumer Slamming Prevention Act, see section 86-201.

Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.

Water Service Regulation Act, see section 75-1001.

75-110.01 Application or petition for authority or relief; procedures.

A summary of the authority or relief sought in an application or petition shall be set out in the notice given according to the rules the commission shall adopt. After notice of an application or petition has been given as provided by the rules for notice, the commission may process the application or petition without a hearing by use of affidavits if the application or petition is not opposed. The commission shall not deny an application or petition of a common carrier, pipeline carrier, or jurisdictional utility until after it has either given the applicant a hearing thereon, or received the applicant's affidavits and made them a part of the record.

Source: Laws 1967, c. 479, § 2, p. 1476; Laws 2003, LB 790, § 64; Laws 2011, First Spec. Sess., LB1, § 15.

75-112 Commissioners and examiners; powers; certification of official acts.

(1) For purposes of carrying out the powers and duties of the commission related to the subjects under its jurisdiction enumerated in section 75-109.01, each commissioner and examiner of the commission may:

(a) Administer oaths;

(b) Compel the attendance of witnesses;

(c) Examine any of the books, papers, documents, and records of any motor carrier or regulated motor carrier as defined in section 75-302 or common, contract, or pipeline carrier subject to the jurisdiction of the commission under section 75-109.01 or any jurisdictional utility or have such examination made by any person that the commission may employ for that purpose;

(d) Compel the production of such books, papers, documents, and records; or
(e) Examine under oath or otherwise any officer, director, agent, or employee of any such carrier or jurisdictional utility or any other person.

(2) Any person employed by the commission to examine such books, papers, documents, or records shall produce his or her authority, under the hand and seal of the commission, to make such examination.

(3) The commissioners may certify to all official acts of the commission.

Source: Laws 1963, c. 425, art. I, § 12, p. 1358; Laws 1989, LB 78, § 2; Laws 1994, LB 414, § 33; Laws 1995, LB 424, § 4; Laws 2003, LB 790, § 65; Laws 2004, LB 1004, § 1; Laws 2011, First Spec. Sess., LB1, § 16.

75-118 Commission; duties.

The commission shall:

(1) Fix all necessary rates, charges, and regulations governing and regulating the transportation, storage, or handling of household goods and passengers by any common carrier in Nebraska intrastate commerce;

(2) Make all necessary classifications of household goods that may be transported, stored, or handled by any common carrier in Nebraska intrastate commerce, such classifications applying to and being the same for all common carriers;

(3) Prevent and correct the unjust discriminations set forth in section 75-126;

(4) Enforce all statutes and commission regulations pertaining to rates and, if necessary, institute actions in the appropriate court of any county in which the common carrier involved operates except actions instituted pursuant to sections 75-140 and 75-156 to 75-158. All suits shall be brought and penalties recovered in the name of the state by or under the direction of the Attorney General; and

(5) Enforce the Major Oil Pipeline Siting Act and the State Natural Gas Regulation Act.

Source: Laws 1963, c. 425, art. I, § 18, p. 1360; Laws 1989, LB 78, § 8; Laws 1994, LB 414, § 36; Laws 1995, LB 424, § 10; Laws 2003, LB 790, § 66; Laws 2011, First Spec. Sess., LB1, § 17.

Cross References

Major Oil Pipeline Siting Act, see section 57-1401.

State Natural Gas Regulation Act, see section 66-1801.

75-128 Hearings; when held; filing fee.

(1) It is hereby declared to be the policy of the Legislature that all matters presented to the commission be heard and determined without delay. All matters requiring a hearing shall be set for hearing at the earliest practicable date and in no event, except for good cause shown, which showing shall be recited in the order, shall the time fixed for hearing be more than six months after the date of filing of the application, complaint, or petition on which such hearing is to be had. Except in case of an emergency and upon a motion to proceed with less than a quorum made by all parties and supported by a showing of clear and convincing evidence of such emergency and benefit to all parties, a quorum of the commission shall hear all matters set for hearing. Except as otherwise provided in the Major Oil Pipeline Siting Act or section

75-121 and except for good cause shown, a decision of the commission shall be made and filed within thirty days after completion of the hearing or after submission of affidavits in nonhearing proceedings.

(2) In the case of any proceeding upon which a hearing is held, the transcript of testimony shall be prepared and submitted to the commission prior to entry of an order, except that it shall not be necessary to have prepared prior to a commission decision the transcripts of testimony on hearings involving noncontested proceedings and hearings involving emergency rate applications under section 75-121.

(3) For each application, complaint, or petition filed with the commission, except those filed under sections 75-303.01 and 75-303.02, the Major Oil Pipeline Siting Act, or the State Natural Gas Regulation Act, the commission shall charge a filing fee to be determined by the commission, but in an amount not to exceed the sum of five hundred dollars, payable at the time of such filing. The commission shall also charge to persons regulated by the commission, except persons regulated under the Major Oil Pipeline Siting Act or the State Natural Gas Regulation Act, a hearing fee to be determined by the commission, but in an amount not to exceed the sum of two hundred fifty dollars, for each half day of hearings if the person regulated by the commission files an application, complaint, or petition which necessitates a hearing.

(4) For each new tariff filed with the commission, except those filed under sections 75-301 to 75-322, the commission shall charge a fee not to exceed fifty dollars. This subsection does not apply to amendments to existing tariffs.

(5) The commission shall remit the fees received to the State Treasurer for credit to the General Fund.

Source: Laws 1963, c. 425, art. I, § 28, p. 1365; Laws 1967, c. 479, § 8, p. 1479; Laws 1969, c. 604, § 1, p. 2464; Laws 1971, LB 24, § 1; Laws 1971, LB 839, § 1; Laws 1972, LB 1068, § 1; Laws 1982, LB 928, § 56; Laws 1982, LB 633, § 2; Laws 1985, LB 384, § 1; Laws 1989, LB 78, § 9; Laws 1993, LB 412, § 1; Laws 1994, LB 414, § 43; Laws 1994, LB 872, § 17; Laws 1995, LB 424, § 13; Laws 2002, LB 1105, § 487; Laws 2003, LB 187, § 17; Laws 2003, LB 790, § 68; Laws 2011, First Spec. Sess., LB1, § 18.

Cross References

Major Oil Pipeline Siting Act, see section 57-1401.

State Natural Gas Regulation Act, see section 66-1801.

75-129 Sessions and hearings; when and where held.

The commission may hold sessions at any place in the state when deemed necessary to facilitate the discharge of its duties and may conduct the hearing and other proceedings provided for in sections 75-101 to 75-801, in the Major Oil Pipeline Siting Act, in the State Natural Gas Regulation Act, or under any other law of this state at such place or places in the state as may, in the judgment of the commission, be the most convenient and practicable for determining the particular matter before the commission. The commission may hold public meetings as provided in section 57-1407.

Source: Laws 1963, c. 425, art. I, § 29, p. 1366; Laws 2003, LB 790, § 69; Laws 2011, First Spec. Sess., LB1, § 19.

Cross References

Major Oil Pipeline Siting Act, see section 57-1401.

State Natural Gas Regulation Act, see section 66-1801.

75-134 Commission order; requirements; when effective; rate order under State Natural Gas Regulation Act; appeal; stay enforcement.

(1) A commission order entered after a hearing shall be written and shall recite (a) a discussion of the facts of a basic or underlying nature, (b) the ultimate facts, and (c) the commission's reasoning or other authority relied upon by the commission.

(2) Every order of the commission shall become effective ten days after the date of the mailing of a copy of the order to the parties of record except (a) when the commission prescribes an alternate effective date, (b) as otherwise provided in section 75-121 or 75-139, (c) for cease and desist orders issued pursuant to section 75-133 which shall become effective on the date of entry, or (d) for orders entered pursuant to section 75-319 which shall become effective on the date of entry.

(3) Except as otherwise provided in this section or for rate orders provided for in section 75-139, any appeal of a commission order shall not stay enforcement of such order unless otherwise ordered by the commission or the Court of Appeals.

(4) Notwithstanding subsection (3) of this section, any appeal of a rate order under the State Natural Gas Regulation Act entered pursuant to section 66-1838 shall stay enforcement of such order pending resolution of the appeal.

Source: Laws 1963, c. 425, art. I, § 34, p. 1367; Laws 1967, c. 479, § 9, p. 1479; Laws 1976, LB 426, § 1; Laws 1991, LB 732, § 130; Laws 1994, LB 414, § 47; Laws 1995, LB 424, § 15; Laws 2000, LB 1285, § 3; Laws 2002, LB 1105, § 490; Laws 2002, LB 1211, § 9; Laws 2003, LB 187, § 19; Laws 2005, LB 247, § 2; Laws 2013, LB545, § 4.

Cross References

State Natural Gas Regulation Act, see section 66-1801.

75-134.02 Motion for reconsideration.

(1) Except with respect to rate orders under the State Natural Gas Regulation Act entered pursuant to section 66-1838, any party may file a motion for reconsideration with the commission within ten days after the effective date of the order as determined under section 75-134. The filing of a motion for reconsideration shall suspend the time for filing a notice of intention to appeal pending resolution of the motion, except that if the commission does not dispose of a motion for reconsideration within sixty days after the filing of the motion, the motion shall be deemed denied and the procedures for appeal in section 75-136 apply.

(2) Any party to a general rate proceeding under the State Natural Gas Regulation Act may file a motion for reconsideration within thirty days after the day an order setting natural gas rates is entered by the commission. The filing of a motion for reconsideration shall stay the order until the earlier of the date the commission enters an order resolving the motion or one hundred twenty days from the date of the order setting rates. Either party shall have thirty days after the date the commission enters an order resolving the motion or the

expiration of the one-hundred-twenty-day period for considering the motion, whichever is earlier, in which to file an appeal.

Source: Laws 2013, LB545, § 7.

Cross References

State Natural Gas Regulation Act, see section 66-1801.

75-136 Orders; right to appeal; manner and time; advancement of appeal of rate order under State Natural Gas Regulation Act.

(1) Except as otherwise provided by law, if a party to any proceeding is not satisfied with the order entered by the commission, such party may appeal.

(2) Any appeal filed on or after October 1, 2013, shall be taken in the same manner and time as appeals from the district court, except that the appellate court shall conduct a review of the matter de novo on the record. Appeals shall be heard and disposed of in the appellate court in the manner provided by law. Appeal of a commission order shall be perfected by filing a notice of intention to appeal with the executive director of the commission within thirty days after the effective date of the order as determined under section 75-134.

(3) Any appeal filed prior to October 1, 2013, shall be in accordance with sections 75-134, 75-136, and 75-156 as such sections existed prior to the changes made by Laws 2013, LB545.

(4) Any appeal of a rate order under the State Natural Gas Regulation Act entered pursuant to section 66-1838 shall be advanced by the Court of Appeals as other causes which involve the public welfare and convenience are advanced.

Source: Laws 1963, c. 425, art. I, § 36, p. 1368; Laws 1967, c. 479, § 11, p. 1480; Laws 1989, LB 78, § 10; Laws 1991, LB 732, § 131; Laws 1992, LB 360, § 32; Laws 1995, LB 424, § 16; Laws 2000, LB 1285, § 4; Laws 2003, LB 187, § 21; Laws 2013, LB545, § 5.

Cross References

State Natural Gas Regulation Act, see section 66-1801.

75-139 Rate order; appeal; when effective; supersedeas bond; effect; applicability of section.

(1) Except as otherwise provided in this section, the effective date of a rate order that is appealed shall be the first Monday following the date of the appellate court's mandate if the order is affirmed, except that (a) a shipper may make effective a rate order reducing a fixed rate by filing a supersedeas bond with the commission sufficient in amount to insure refund of the difference between the rate appealed and the original rate to the carrier entitled thereto if the order appealed is reversed and (b) a common carrier may make effective a rate order increasing a fixed rate by filing a supersedeas bond with the commission sufficient in amount to insure refund of the difference between the rate finally approved and the rate appealed to shippers or subscribers entitled thereto if the order appealed is reversed.

(2) A supersedeas bond may be filed by any affected shipper or common carrier, including shippers or common carriers that were not parties to the rate proceeding, at any time prior to the issuance of the appellate court's mandate. Only the shipper or common carrier filing a supersedeas bond shall benefit from such filing.

(3) The commission shall approve a supersedeas bond which meets the requirements of this section within seven days after a written request therefor has been made, and failure to disapprove the bond within the time specified shall be deemed to be an approval.

(4) A carrier may put into effect rate increases granted by a commission order while appealing that portion of the commission's order denying a part of an application of the carrier.

(5) This section does not apply to rate orders under the State Natural Gas Regulation Act entered pursuant to section 66-1838.

Source: Laws 1963, c. 425, art. I, § 39, p. 1369; Laws 1967, c. 479, § 14, p. 1481; Laws 1976, LB 426, § 2; Laws 1991, LB 732, § 135; Laws 2013, LB545, § 6.

Cross References

State Natural Gas Regulation Act, see section 66-1801.

75-156 Civil penalty; procedure; order; appeal.

(1) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars per day against any person, motor carrier, regulated motor carrier, common carrier, contract carrier, grain dealer, or grain warehouseman for each violation of (a) any provision of the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01, (b) any term, condition, or limitation of any certificate, permit, or authority issued by the commission pursuant to the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01, or (c) any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to the laws of this state within the jurisdiction of the commission as enumerated in section 75-109.01.

(2) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty not less than one hundred dollars and not more than one thousand dollars against any jurisdictional utility for each violation of (a) any provision of the State Natural Gas Regulation Act, (b) any rule, regulation, order, or lawful requirement issued by the commission pursuant to the act, (c) any final judgment or decree made by any court upon appeal from any order of the commission, or (d) any term, condition, or limitation of any certificate issued by the commission issued under authority delegated to the commission pursuant to the act. The amount of the civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

(3) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars per day against any wireless carrier for each violation of the Enhanced Wireless

911 Services Act or any rule, regulation, or order of the commission issued under authority delegated to the commission pursuant to the act.

(4) In addition to other penalties and relief provided by law, the Public Service Commission may, upon a finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to one thousand dollars against any person for each violation of the Nebraska Uniform Standards for Modular Housing Units Act or the Uniform Standard Code for Manufactured Homes and Recreational Vehicles or any rule, regulation, or order of the commission issued under the authority delegated to the commission pursuant to either act. Each such violation shall constitute a separate violation with respect to each modular housing unit, manufactured home, or recreational vehicle, except that the maximum penalty shall not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation.

(5) The civil penalty assessed under this section shall not exceed two million dollars per year for each violation except as provided in subsection (4) of this section. The amount of the civil penalty assessed in each case shall be based on the severity of the violation charged. The commission may compromise or mitigate any penalty prior to hearing if all parties agree. In determining the amount of the penalty, the commission shall consider the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator in attempting to achieve compliance after notification of the violation is given.

(6) Upon notice and hearing in accordance with this section and section 75-157, the commission may enter an order assessing a civil penalty of up to one hundred dollars against any person, firm, partnership, limited liability company, corporation, cooperative, or association for failure to file an annual report or pay the fee as required by section 75-116 and as prescribed by commission rules and regulations or for failure to register as required by section 86-125 and as prescribed by commission rules and regulations. Each day during which the violation continues after the commission has issued an order finding that a violation has occurred constitutes a separate offense. Any party aggrieved by an order of the commission under this section may appeal. The appeal shall be in accordance with section 75-136.

(7) When any person or party is accused of any violation listed in this section, the commission shall notify such person or party in writing (a) setting forth the date, facts, and nature of each act or omission upon which each charge of a violation is based, (b) specifically identifying the particular statute, certificate, permit, rule, regulation, or order purportedly violated, (c) that a hearing will be held and the time, date, and place of the hearing, (d) that in addition to the civil penalty, the commission may enforce additional penalties and relief as provided by law, and (e) that upon failure to pay any civil penalty determined by the commission, the penalty may be collected by civil action in the district court of Lancaster County.

Source: Laws 1995, LB 424, § 18; Laws 1996, LB 1218, § 41; Laws 2000, LB 1285, § 9; Laws 2002, LB 1105, § 493; Laws 2002, LB 1211, § 10; Laws 2003, LB 187, § 22; Laws 2003, LB 735, § 1; Laws 2003, LB 790, § 73; Laws 2005, LB 319, § 3; Laws 2008, LB755, § 3; Laws 2013, LB545, § 8.

Cross References

Enhanced Wireless 911 Services Act, see section 86-442.
 Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.
 State Natural Gas Regulation Act, see section 66-1801.
 Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.

75-159 Public Service Commission Housing and Recreational Vehicle Cash Fund; created; use; investment.

(1) The Public Service Commission Housing and Recreational Vehicle Cash Fund is created. The fund shall consist of fees collected under the Nebraska Uniform Standards for Modular Housing Units Act and fees collected pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles.

(2) Money credited to the fund shall be used by the Public Service Commission for the purposes of administering the Nebraska Uniform Standards for Modular Housing Units Act and the Uniform Standard Code for Manufactured Homes and Recreational Vehicles.

(3) Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Public Service Commission Housing and Recreational Vehicle 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.

(4) On July 1, 2010, the State Treasurer shall transfer any money in the Modular Housing Units Cash Fund and any money in the Manufactured Homes and Recreational Vehicles Cash Fund to the Public Service Commission Housing and Recreational Vehicle Cash Fund.

Source: Laws 2010, LB849, § 36.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
 Nebraska State Funds Investment Act, see section 72-1260.
 Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.
 Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.

ARTICLE 3

MOTOR CARRIERS

(a) INTRASTATE MOTOR CARRIERS

Section

- 75-302. Terms, defined.
- 75-303. Motor carriers; scope of law.
- 75-311. Certificates; permits; issuance; review by commission; effect.

(e) SAFETY REGULATIONS

- 75-362. Federal regulations; terms, defined.
- 75-363. Federal motor carrier safety regulations; provisions adopted; exceptions.
- 75-364. Additional federal motor carrier regulations; provisions adopted.
- 75-366. Enforcement powers.
- 75-369.03. Violations; civil penalty; referral to federal agency or Public Service Commission; when.

(l) UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT

- 75-392. Terms, defined.
- 75-393. Unified carrier registration plan and agreement; director; powers.

(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) Attended services means an attendant or caregiver accompanying a minor or a person who has a physical, mental, or developmental disability and is unable to travel or wait without assistance or supervision;

(2) Carrier enforcement division means the carrier enforcement division of the Nebraska State Patrol or the Nebraska State Patrol;

(3) Certificate means a certificate of public convenience and necessity issued under Chapter 75, article 3, to common carriers by motor vehicle;

(4) 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;

(5) Commission means the Public Service Commission;

(6) 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;

(7) 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;

(8) Division of Motor Carrier Services means the Division of Motor Carrier Services of the Department of Motor Vehicles;

(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) Licensed care transportation services means transportation provided by an entity licensed by the Department of Health and Human Services as a residential child-caring agency as defined in section 71-1926 or child-placing agency as defined in section 71-1926 or a child care facility licensed under the Child Care Licensing Act to a client of the entity or facility when the person

providing transportation services also assists and supervises the passenger or, if the client is a minor, to a family member of a minor when it is necessary for agency or facility staff to accompany or facilitate the transportation in order to provide necessary services and support to the minor. Licensed care transportation services must be incidental to and in furtherance of the social services provided by the entity or facility to the transported client;

(13) 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;

(14) 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;

(15) Permit means a permit issued under Chapter 75, article 3, to contract carriers by motor vehicle;

(16) 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;

(17) 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;

(18) 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;

(19) Residential care means care for a minor or a person who is physically, mentally, or developmentally disabled who resides in a residential home or facility regulated by the Department of Health and Human Services, including, but not limited to, a foster home, treatment facility, residential child-caring agency, or shelter;

(20) Residential care transportation services means transportation services to persons in residential care when such residential care transportation services and residential care are provided as part of a services contract with the Department of Health and Human Services or pursuant to a subcontract entered into incident to a services contract with the department; and

(21) Supported transportation services means transportation services to a minor or for a person who is physically, mentally, or developmentally disabled when the person providing transportation services also assists and supervises the passenger or transportation services to a family member of a minor when it is necessary for provider staff to accompany or facilitate the transportation in order to provide necessary services and support to the minor. Supported transportation services must be provided as part of a services contract with the Department of Health and Human Services or pursuant to a subcontract entered into incident to a services contract with the department, and the driver

must meet department requirements for (a) training or experience working with minors or persons who are physically, mentally, or developmentally disabled, (b) training with regard to the specific needs of the client served, (c) reporting to the department, and (d) age. Assisting and supervising the passenger shall not necessarily require the person providing transportation services to stay with the passenger after the transportation services have been provided.

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; Laws 2011, LB112, § 1; Laws 2013, LB265, § 45.

Cross References

Child Care Licensing Act, see section 71-1908.

75-303 Motor carriers; scope of law.

Sections 75-301 to 75-322 shall apply to transportation by a motor carrier or the transportation of passengers and household goods by a regulated motor carrier for hire in intrastate commerce except for the following:

(1) A motor carrier for hire in the transportation of school children and teachers to and from school;

(2) A motor carrier for hire operated in connection with a part of a streetcar system;

(3) An ambulance, ambulance owner, hearse, or automobile used exclusively as an incident to conducting a funeral;

(4) A motor carrier exempt by subdivision (1) of this section which hauls for hire (a) persons of a religious, fraternal, educational, or charitable organization, (b) pupils of a school to athletic events, (c) players of American Legion baseball teams when the point of origin or termination is within five miles of the domicile of the carrier, and (d) the elderly as defined in section 13-1203 and their spouses and dependents under a contract with a municipality or county authorized in section 13-1208;

(5) A motor carrier operated by a city and engaged in the transportation of passengers, and such exempt operations shall be no broader than those authorized in intrastate commerce at the time the city or other political subdivision assumed ownership of the operation;

(6) A motor vehicle owned and operated by a nonprofit organization which is exempt from payment of federal income taxes, as provided by section 501(c)(4), Internal Revenue Code, transporting solely persons over age sixty, persons who are spouses and dependents of persons over age sixty, and handicapped persons;

(7) A motor carrier engaged in the transportation of passengers operated by a transit authority created under and acting pursuant to the laws of the State of Nebraska;

(8) A motor carrier operated by a municipality or county, as authorized in section 13-1208, in the transportation of elderly persons;

(9) A motor vehicle having a seating capacity of twenty or less which is operated by a governmental subdivision or a qualified public-purpose organiza-

tion as defined in section 13-1203 engaged in the transportation of passengers in the state;

(10) A motor vehicle owned and operated by a nonprofit entity organized for the purpose of furnishing electric service;

(11) A motor carrier engaged in attended services under contract or subcontract with the Department of Health and Human Services or with any agency organized under the Nebraska Community Aging Services Act;

(12) A motor carrier engaged in residential care transportation services if the motor carrier complies with the requirements of the Department of Health and Human Services adopted, promulgated, and enforced to protect the safety and well-being of the passengers, including insurance, training, and age requirements;

(13) A motor carrier engaged in supported transportation services if the motor carrier complies with the requirements of the Department of Health and Human Services adopted, promulgated, and enforced to protect the safety and well-being of the passengers, including insurance, training, and age requirements; and

(14) A motor carrier engaged in licensed care transportation services if the motor carrier files a certificate with the commission that such provider meets the minimum driver standards, insurance requirements, and equipment standards prescribed by the commission. Insurance requirements established by the commission shall be consistent with the insurance requirements established by the Department of Health and Human Services for attended services, residential care transportation services, and supported transportation services.

Source: Laws 1963, c. 425, art. III, § 3, p. 1376; Laws 1969, c. 606, § 2, p. 2468; Laws 1972, LB 1178, § 1; Laws 1973, LB 54, § 1; Laws 1973, LB 70, § 1; Laws 1973, LB 345, § 2; Laws 1974, LB 762, § 1; Laws 1981, LB 85, § 2; Laws 1981, LB 144, § 8; Laws 1983, LB 98, § 1; Laws 1989, LB 78, § 19; Laws 1993, LB 412, § 3; Laws 1993, LB 413, § 3; Laws 1995, LB 424, § 23; Laws 1996, LB 1218, § 44; Laws 1999, LB 594, § 67; Laws 2011, LB112, § 2.

Cross References

Nebraska Community Aging Services Act, see section 81-2201.

75-311 Certificates; permits; issuance; review by commission; effect.

(1) A certificate shall be issued to any qualified applicant authorizing the whole or any part of the operations covered by the application if it is found after notice and hearing that (a) the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of sections 75-301 to 75-322 and the requirements, rules, and regulations of the commission under such sections and (b) the proposed service, to the extent to be authorized by the certificate, whether regular or irregular, passenger or household goods, is or will be required by the present or future public convenience and necessity. Otherwise the application shall be denied.

(2) A permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application if it appears after notice and hearing from the application or from any hearing held on the application that (a) the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions

of such sections and the lawful requirements, rules, and regulations of the commission under such sections and (b) the proposed operation, to the extent authorized by the permit, will be consistent with the public interest by providing services designed to meet the distinct needs of each individual customer or a specifically designated class of customers as defined in subdivision (7) of section 75-302. Otherwise the application shall be denied.

(3) No person shall at the same time hold a certificate as a common carrier and a permit as a contract carrier for transportation of household goods by motor vehicles over the same route or within the same territory unless the commission finds that it is consistent with the public interest and with the policy declared in section 75-301.

(4) After the issuance of a certificate or permit, the commission shall review the operations of all common or contract carriers who hold authority from the commission to determine whether there are insufficient operations in the transportation of household goods to justify the commission's finding that such common or contract carrier has willfully failed to perform transportation under sections 75-301 to 75-322 and rules and regulations promulgated under such sections. If the commission determines that there are insufficient operations, then the commission shall commence proceedings under section 75-315 to revoke the certificate or permit involved.

(5) This section shall not apply to operations pursuant to a contract authorized by sections 75-303.01 and 75-303.02.

Source: Laws 1963, c. 425, art. III, § 11, p. 1381; Laws 1969, c. 606, § 6, p. 2471; Laws 1972, LB 1370, § 2; Laws 1974, LB 438, § 2; Laws 1989, LB 78, § 25; Laws 1990, LB 980, § 27; Laws 1993, LB 412, § 10; Laws 1994, LB 414, § 74; Laws 1995, LB 424, § 38; Laws 1996, LB 1218, § 50; Laws 2011, LB112, § 3.

(e) SAFETY REGULATIONS

75-362 Federal regulations; terms, defined.

For purposes of sections 75-362 to 75-369.07, unless the context otherwise requires:

(1) Accident means:

(a) Except as provided in subdivision (b) of this subdivision, an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicles to be transported away from the scene by a tow truck or other motor vehicle.

(b) The term accident does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo;

(2) Bulk packaging means a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment and which has:

(a) A maximum capacity greater than one hundred nineteen gallons as a receptacle for a liquid;

(b) 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

(c) A water capacity greater than one thousand pounds as a receptacle for a gas as defined in 49 C.F.R. 173.115;

(3) Cargo tank means a bulk packaging that:

(a) Is a tank intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings, and closures;

(b) Is permanently attached to or forms a part of a motor vehicle or is not permanently attached to a motor vehicle but which, by reason of its size, construction, or attachment to a motor vehicle, is loaded or unloaded without being removed from the motor vehicle; and

(c) Is not fabricated under a specification for cylinders, intermediate bulk containers, multi-unit tank-car tanks, portable tanks, or tank cars;

(4) Cargo tank motor vehicle means a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle;

(5) Commercial enterprise means any business activity relating to or based upon the production, distribution, or consumption of goods or services;

(6) Commercial motor vehicle means any self-propelled or towed motor vehicle used on a highway in interstate commerce or intrastate commerce to transport passengers or property when the vehicle:

(a) Has a gross vehicle weight rating or gross combination weight rating or gross vehicle weight or gross combination weight of ten thousand one pounds or more, whichever is greater;

(b) Is designed or used to transport more than eight passengers, including the driver, for compensation;

(c) Is designed or used to transport more than fifteen passengers, including the driver, and is not used to transport passengers for compensation; or

(d) Is used in transporting material found to be hazardous and such material is transported in a quantity requiring placarding pursuant to section 75-364;

(7) Compliance review means an onsite examination of motor carrier operations, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of safety violations. The compliance review may result in the initiation of an enforcement action with penalties;

(8)(a) Covered farm vehicle means a motor vehicle, including an articulated motor vehicle:

(i) That:

(A) Is traveling in the state in which the vehicle is registered or another state;

(B) Is operated by:

(I) A farm owner or operator;

(II) A ranch owner or operator; or

(III) An employee or family member of an individual specified in subdivision (8)(a)(i)(B)(I) or (8)(a)(i)(B)(II) of this section;

(C) Is transporting to or from a farm or ranch:

(I) Agricultural commodities;

(II) Livestock; or

(III) Machinery or supplies;

(D) Except as provided in subdivision (8)(b) of this section, is not used in the operations of a for-hire motor carrier; and

(E) Is equipped with a special license plate or other designation by the state in which the vehicle is registered to allow for identification of the vehicle as a farm vehicle by law enforcement personnel; and

(ii) That has a gross vehicle weight rating or gross vehicle weight, whichever is greater, that is:

(A) Less than twenty-six thousand one pounds; or

(B) Twenty-six thousand one pounds or more and is traveling within the state or within one hundred fifty air miles of the farm or ranch with respect to which the vehicle is being operated.

(b) Covered farm vehicle includes a motor vehicle that meets the requirements of subdivision (8)(a) of this section, except for subdivision (8)(a)(i)(D) of this section, and:

(i) Is operated pursuant to a crop share farm lease agreement;

(ii) Is owned by a tenant with respect to that agreement; and

(iii) Is transporting the landlord's portion of the crops under that agreement.

(c) Covered farm vehicle does not include:

(i) A combination of truck-tractor and semitrailer which is operated by a person under eighteen years of age; or

(ii) A combination of truck-tractor and semitrailer which is used in the transportation of materials found to be hazardous for the purposes of the federal Hazardous Materials Transportation Act and which require the combination to be placarded under 49 C.F.R. part 172, subpart F;

(9) Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(a) Inclusions: Damage to motor vehicles that could have been driven but would have been further damaged if so driven.

(b) Exclusions:

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts;

(ii) Tire disablement without other damage even if no spare tire is available;

(iii) Headlight or taillight damage; and

(iv) Damage to turnsignals, horn, or windshield wipers which makes them inoperative;

(10) Driver means any person who operates any commercial motor vehicle;

(11) Elevated temperature material means a material which, when offered for transportation or transported in a bulk packaging:

(a) Is in a liquid phase and at a temperature at or above two hundred twelve degrees Fahrenheit;

(b) Is in a liquid phase with a flash point at or above one hundred degrees Fahrenheit that is intentionally heated and offered for transportation or transported at or above its flash point; or

(c) Is in a solid phase and at a temperature at or above four hundred sixty-four degrees Fahrenheit;

(12) Employee means any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle, including an independent contractor while in the course of operating a commercial motor vehicle, a mechanic, and a freight handler. Such term does not include an employee of the United States, any state, any political subdivision of a state, or any agency established under a compact between states and approved by the Congress of the United States who is acting within the course of such employment;

(13) Employer means any person engaged in a business affecting commerce who owns or leases a commercial motor vehicle in connection with that business or assigns employees to operate it. Such term does not include the United States, any state, any political subdivision of a state, or an agency established under a compact between states approved by the Congress of the United States;

(14) Exempt motor carrier means a person engaged in transportation exempt from economic regulation under 49 U.S.C. 13506. An exempt motor carrier is subject to the safety regulations adopted in sections 75-362 to 75-369.07;

(15) Farm vehicle driver means a person who drives only a commercial motor vehicle that is controlled and operated by a farmer as a private motor carrier of property;

(16) Farmer means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which:

(a) Are owned by that person; or

(b) Are under the direct control of that person;

(17) Fatality means any injury which results in the death of a person at the time of the motor vehicle accident or within thirty days after the accident;

(18) Fertilizer and agricultural chemical application and distribution equipment means:

(a) Self-propelled or towed equipment, designed and used exclusively to apply commercial fertilizer, as that term is defined in section 81-2,162.02, chemicals, or related products to agricultural soil and crops; or

(b) Towed equipment designed and used exclusively to carry commercial fertilizer, as that term is defined in section 81-2,162.02, chemicals, or related products for use on agricultural soil and crops, which are equipped with implement or floatation tires;

(19) For-hire motor carrier means a person engaged in the transportation of goods or passengers for compensation;

(20) Gross combination weight means the sum of the empty weight of a motor vehicle plus the total weight of any load carried thereon and the empty weight of the towed unit or units plus the total weight of any load carried on such towed unit or units;

(21) Gross combination weight rating means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, gross combination weight rating will be determined by adding either the gross vehicle weight rating or gross vehicle weight of the motor vehicle plus the gross vehicle weight rating or gross vehicle weight of the towed unit or units;

(22) Gross vehicle weight means the sum of the empty weight of a motor vehicle plus the total weight of any load carried thereon;

(23) Gross vehicle weight rating means the value specified by the manufacturer as the loaded weight of a single motor vehicle. In the absence of such value specified by the manufacturer or the absence of any marking of such value on the vehicle, the gross vehicle weight rating shall be determined from the sum of the axle weight ratings of the vehicle or the sum of the tire weight ratings as marked on the sidewall of the tires, whichever is greater. In the absence of any tire sidewall marking, the tire weight ratings shall be determined for the specified tires from any of the publications of any of the organizations listed in 49 C.F.R. 571.119;

(24) Hazardous material means a substance or material that the Secretary of the United States Department of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce and has designated as hazardous under 49 U.S.C. 5103. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table, 49 C.F.R. 172.101, and materials that meet the defining criteria for hazard classes and divisions in 49 C.F.R. part 173;

(25) Hazardous substance means a material, including its mixtures and solutions, that is listed in 49 C.F.R. 172.101, Appendix A, List Of Hazardous Substances and Reportable Quantities, and is in a quantity, in one package, which equals or exceeds the reportable quantity listed in 49 C.F.R. 172.101, Appendix A. This definition does not apply to petroleum products that are lubricants or fuels or to mixtures or solutions of hazardous substances if in a concentration less than that shown in the table in 49 C.F.R. 171.8 under the definition of hazardous substance based on the reportable quantity specified for the materials listed in 49 C.F.R. 172.101, Appendix A;

(26) Hazardous waste means any material that is subject to the hazardous waste manifest requirements of the United States Environmental Protection Agency specified in 40 C.F.R. 262;

(27) Highway means the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;

(28) Interstate commerce means trade, traffic, or transportation provided in the furtherance of a commercial enterprise in the United States;

(a) Between a place in a state and a place outside of such state, including a place outside of the United States;

(b) Between two places in a state through another state or a place outside of the United States; or

(c) Between two places in a state as part of trade, traffic, or transportation originating or terminating outside the state or the United States;

(29) Intrastate commerce means any trade, traffic, or transportation provided in the furtherance of a commercial enterprise between any place in the State of Nebraska and any other place in Nebraska and not through any other state;

(30) Marine pollutant means a material which is listed in the Hazardous Materials Table, 49 C.F.R. 172.101, Appendix B, as a marine pollutant (see 49 C.F.R. 171.4 for applicability to marine pollutants) and, when in a solution or mixture of one or more marine pollutants, is packaged in a concentration which equals or exceeds:

(a) Ten percent by weight of the solution or mixture for materials listed in 49 C.F.R. 172.101, Appendix B; or

(b) One percent by weight of the solution or mixture for materials that are identified as severe marine pollutants in the Hazardous Materials Table, 49 C.F.R. 172.101, Appendix B;

(31) Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers, and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment or accessories. This definition includes the terms employer and exempt motor carrier;

(32) Motor vehicle means any vehicle, truck, truck-tractor, trailer, or semi-trailer propelled or drawn by mechanical power except (a) farm tractors, (b) vehicles which run only on rails or tracks, and (c) road and general-purpose construction and maintenance machinery which by design and function is obviously not intended for use on a public highway, including, but not limited to, motor scrapers, earthmoving equipment, backhoes, trenchers, motor graders, compactors, tractors, bulldozers, bucket loaders, ditchdigging apparatus, asphalt spreaders, leveling graders, power shovels, and crawler tractors;

(33) Nonbulk packaging means a packaging which has:

(a) A maximum capacity of one hundred nineteen gallons or less as a receptacle for a liquid;

(b) A maximum net mass of eight hundred eighty-two pounds or less and a maximum capacity of one hundred nineteen gallons or less as a receptacle for a solid; or

(c) A water capacity of one thousand pounds or less as a receptacle for a gas as defined in 49 C.F.R. 173.115;

(34) Out-of-service order means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 C.F.R. 386.72, 392.5, 392.9a, 395.13, or 396.9, or compatible laws or the North American Uniform Out-of-Service Criteria;

(35) Packaging means a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conform-

ance with the minimum packing requirements of Title 49 of the Code of Federal Regulations. For radioactive materials packaging, see 49 C.F.R. 173.403;

(36) Person means any individual, partnership, association, corporation, business trust, or any other organized group of individuals;

(37) Planting and harvesting season means the period beginning on January 1 up to and including December 31 of each calendar year;

(38) Principal place of business means the single location designated by the motor carrier, normally its headquarters, for purposes of identification. The motor carrier must make records required by the regulations referred to in sections 75-362 to 75-369.07 available for inspection at this location within forty-eight hours, Saturdays, Sundays, and state or federal holidays excluded, after a request has been made by an officer of the Nebraska State Patrol;

(39) Private motor carrier means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier;

(40) Safety audit means an examination of a motor carrier's operations to provide educational and technical assistance on drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. The purpose of a safety audit is to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings; and

(41) Tank means a container, consisting of a shell and heads, that forms a pressure-tight vessel having openings designed to accept pressure-tight fittings or closures, but excludes any appurtenances, reinforcements, fittings, or closures.

Source: Laws 2006, LB 1007, § 14; Laws 2010, LB725, § 2; Laws 2010, LB805, § 12; Laws 2014, LB983, § 60.
Operative date March 29, 2014.

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, 2014, 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 386 - RULES OF PRACTICE FOR MOTOR CARRIER, INTERMODAL EQUIPMENT PROVIDER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS;

(d) Part 387 - MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS;

(e) Part 390 - FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL;

(f) Part 391 - QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS;

(g) Part 392 - DRIVING OF COMMERCIAL MOTOR VEHICLES;

(h) Part 393 - PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION;

(i) Part 395 - HOURS OF SERVICE OF DRIVERS;

(j) Part 396 - INSPECTION, REPAIR, AND MAINTENANCE;

(k) Part 397 - TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES; and

(l) 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. 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) The following parts and subparts of 49 C.F.R. chapter III shall not apply to the operation of covered farm vehicles:

(a) Part 382 - CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING;

(b) Part 391, subpart E - Physical Qualifications and Examinations;

(c) Part 395 - HOURS OF SERVICE OF DRIVERS; and

(d) Part 396 - INSPECTION, REPAIR, AND MAINTENANCE.

(7) Part 393 - PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION and Part 396 - INSPECTION, REPAIR, AND MAINTENANCE shall not apply to fertilizer and agricultural chemical application and distribution equipment transported in units with a capacity of three thousand five hundred gallons or less.

(8) 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.

(9)(a) 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:

(i) More than twelve hours following eight consecutive hours off duty; or

(ii) For any period after having been on duty sixteen hours following eight consecutive hours off duty.

(b) 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.

(10) Part 395 - HOURS OF SERVICE OF DRIVERS, as adopted in subsections (3) and (9) of this section, shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes during planting and harvesting season when:

(a) The transportation of such agricultural commodities is from the source of the commodities to a location within a one-hundred-fifty-air-mile radius of the source of the commodities;

(b) The transportation of such farm supplies is from a wholesale or retail distribution point of the farm supplies to a farm or other location where the farm supplies are intended to be used which is within a one-hundred-fifty-air-mile radius of the wholesale or retail distribution point; or

(c) The transportation of such farm supplies is from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies which is within a one-hundred-fifty-air-mile radius of the wholesale distribution point.

(11) 49 C.F.R. 390.21 - MARKING OF SELF-PROPELLED CMVS AND INTERMODAL EQUIPMENT shall not apply to farm trucks and farm truck-

tractors registered pursuant to section 60-3,146 and operated solely in intrastate commerce.

(12) 49 C.F.R. 392.9a - Operating Authority shall not apply to Nebraska motor carriers operating commercial motor vehicles solely in intrastate commerce.

(13) No motor carrier shall permit or require a driver of a commercial motor vehicle to violate, and no driver of a commercial motor vehicle shall violate, any out-of-service order.

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; Laws 2008, LB756, § 28; Laws 2008, LB845, § 1; Laws 2009, LB48, § 1; Laws 2009, LB331, § 15; Laws 2010, LB725, § 3; Laws 2010, LB805, § 13; Laws 2011, LB178, § 21; Laws 2011, LB212, § 7; Laws 2012, LB751, § 49; Laws 2013, LB35, § 6; Laws 2014, LB983, § 61.
Operative date March 29, 2014.

Cross References

Violation of section, penalty, see section 75-367.

75-364 Additional federal motor carrier regulations; provisions adopted.

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, 2014, are adopted as part of Nebraska law and 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:

(1) 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;

(2) Part 107 - HAZARDOUS MATERIALS PROGRAM PROCEDURES, subpart G-Registration of Persons Who Offer or Transport Hazardous Materials;

(3) Part 171 - GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS;

(4) Part 172 - HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS;

(5) Part 173 - SHIPPERS - GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS;

(6) Part 177 - CARRIAGE BY PUBLIC HIGHWAY;

(7) Part 178 - SPECIFICATIONS FOR PACKAGINGS; and

(8) Part 180 - CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS.

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; Laws 2008, LB756, § 29; Laws 2009, LB48, § 2; Laws 2009, LB331, § 16; Laws 2010, LB805, § 14; Laws 2011, LB178, § 22; Laws 2011, LB212, § 8; Laws 2012, LB751, § 50; Laws 2013, LB35, § 7; Laws 2014, LB983, § 62.
Operative date March 29, 2014.

75-366 Enforcement powers.

For the purpose of enforcing Chapter 75, article 3, any officer of the Nebraska State Patrol may, upon demand, inspect the accounts, records, and equipment of any motor carrier or shipper. Any officer of the Nebraska State Patrol shall have the authority to enforce the federal motor carrier safety regulations, as such regulations existed on January 1, 2014, and federal hazardous materials regulations, as such regulations existed on January 1, 2014, and is authorized to enter upon, inspect, and examine any and all lands, buildings, and equipment of any motor carrier, any shipper, and any other person subject to the federal Interstate Commerce Act, the federal Department of Transportation Act, and other related federal laws and to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents of a motor carrier, a shipper, and any other person subject to Chapter 75, article 3, for the purposes of enforcing Chapter 75, article 3. To promote uniformity of enforcement, the carrier enforcement division of the Nebraska State Patrol shall cooperate and consult with the Public Service Commission and the Division of Motor Carrier Services.

Source: Laws 1986, LB 301, § 4; Laws 1987, LB 538, § 2; Laws 1990, LB 980, § 31; Laws 1995, LB 424, § 48; Laws 1996, LB 1218, § 60; Laws 2002, LB 93, § 18; Laws 2003, LB 480, § 4; Laws 2012, LB751, § 51; Laws 2013, LB35, § 8; Laws 2014, LB983, § 63.
Operative date March 29, 2014.

75-369.03 Violations; civil penalty; referral to federal agency or Public Service Commission; when.

(1) 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 75-392 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.

(2) 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 subdivision (2)(e) of section 60-4,162 based upon a conviction of such a violation.

(3) The superintendent shall issue an order imposing a civil penalty against a driver operating a commercial motor vehicle, as defined in section 60-465, that requires a commercial driver's license or CLP-commercial learner's permit, in violation of an out-of-service order. The civil penalty shall be in an amount not less than two thousand five hundred dollars but not more than five thousand dollars for a first violation and not less than five thousand one dollars but not more than seven thousand five hundred dollars for a second or subsequent violation.

(4) The superintendent shall issue an order imposing a civil penalty against a motor carrier who knowingly allows, requires, permits, or authorizes the operation of a commercial motor vehicle, as defined in section 60-465, that requires a commercial driver's license or CLP-commercial learner's permit, in violation of an out-of-service order. The civil penalty shall be not less than two thousand seven hundred fifty dollars but not more than twenty-five thousand dollars per violation.

(5) 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; Laws 2008, LB845, § 2; Laws 2009, LB331, § 17; Laws 2014, LB983, § 64.

Operative date July 8, 2015.

(I) 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. 14504a, as such section existed on January 1, 2014.

Source: Laws 2007, LB358, § 1; Laws 2014, LB776, § 7.
Effective date March 29, 2014.

75-393 Unified carrier registration plan and agreement; director; powers.

The director may participate in the unified carrier registration plan and agreement pursuant to the Unified Carrier Registration Act of 2005, 49 U.S.C. 13908, as the act existed on January 1, 2014, and may file on behalf of this state the plan required by such plan and agreement for enforcement of the act in this state.

Source: Laws 2007, LB358, § 2; Laws 2009, LB331, § 19; Laws 2011, LB212, § 9; Laws 2012, LB751, § 52; Laws 2013, LB35, § 9; Laws 2014, LB776, § 8.
Effective date March 29, 2014.

ARTICLE 5 PIPELINE CARRIERS

Section

75-502. Pipeline carriers; powers.

75-502 Pipeline carriers; powers.

Pipeline carriers which are declared common carriers under section 75-501, pipeline carriers approved under the Major Oil Pipeline Siting Act, and pipeline carriers for which the Governor approves a route under section 57-1503 may store, transport, or convey any liquid or gas, or the products thereof, and make reasonable charges therefor, may lay down, construct, maintain, and operate pipelines, tanks, pump stations, connections, fixtures, storage plants, and such machinery, apparatus, devices, and arrangement as may be necessary to operate such pipes or pipelines between different points in this state, and may use and occupy such lands, rights-of-way, easements, franchises, buildings, and structures as may be necessary to construct and maintain them.

Source: Laws 1963, c. 425, art. V, § 2, p. 1416; Laws 1994, LB 414, § 98; Laws 2011, First Spec. Sess., LB1, § 20.

Cross References

Major Oil Pipeline Siting Act, see section 57-1401.

ARTICLE 7 TRANSMISSION LINES

Section

75-722. Procedure; appeal; provisions applicable.

75-722 Procedure; appeal; provisions applicable.

Commission hearings concerning the provisions of sections 75-709 to 75-724 shall be in accordance with the Administrative Procedure Act. Any appeals therefrom shall be in accordance with section 75-136.

Source: Laws 1963, c. 425, art. VII, § 22, p. 1428; Laws 1994, LB 414, § 132; Laws 2000, LB 1285, § 14; Laws 2013, LB545, § 9.

Cross References

Administrative Procedure Act, see section 84-920.



REAL PROPERTY

CHAPTER 76
REAL PROPERTY

Article.

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 - (t) Filing of Death Certificate. 76-2,126.
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- 34. Nebraska Uniform Real Property Transfer on Death Act. 76-3401 to 76-3423.

ARTICLE 2
CONVEYANCES

(a) DEFINITIONS

Section

- 76-201. Real estate, defined.
- 76-202. Purchaser, defined.
- 76-203. Deed, defined.

(d) FORMALITIES OF EXECUTION

- 76-214. Deed, memorandum of contract, or land contract; recorded; death certificate filed; statement required; access.
- 76-215. Statement; failure to furnish; penalty.

(f) RECORDING

- 76-238. Deeds and other instruments; recording; when effective as notice; possession of real estate; not effective as notice; when.
- 76-238.01. Mortgages; interest in real estate included; debts that may be secured; future advances; optimal future advance; notice; filing; limitation.
- 76-246. Conveyances; power of attorney; how revoked.

Section

(h) SPECIAL KINDS OF CONVEYANCES

76-277. Conveyances; claims and improvements upon public lands; law applicable.

(p) DISCLOSURE STATEMENT

76-2,120. Written disclosure statement required, when; contents; delivery; liability; noncompliance; effect; State Real Estate Commission; rules and regulations.

(t) FILING OF DEATH CERTIFICATE

76-2,126. Certain conveyances; filing of death certificate and attached cover sheet with register of deeds.

(a) DEFINITIONS

76-201 Real estate, defined.

For purposes of sections 76-201 to 76-281 and 76-2,126, the term real estate shall be construed as coextensive in meaning with lands, tenements, and hereditaments, and as embracing all chattels real, except leases for a term not exceeding one year.

Source: R.S.1866, c. 43, § 49, p. 290; R.S.1913, § 6187; C.S.1922, § 5586; C.S.1929, § 76-101; R.S.1943, § 76-201; Laws 2012, LB536, § 26.

76-202 Purchaser, defined.

The term purchaser, as used in sections 76-201 to 76-281 and 76-2,126, shall be construed to embrace every person to whom any real estate or interest therein shall be conveyed for valuable consideration and also any assignee of mortgage or lease or other conditional estate.

Source: R.S.1866, c. 43, § 50, p. 291; R.S.1913, § 6188; C.S.1922, § 5587; C.S.1929, § 76-102; R.S.1943, § 76-202; Laws 2012, LB536, § 27.

76-203 Deed, defined.

The term deed, as used in sections 76-201 to 76-281 and 76-2,126, shall be construed to embrace every instrument in writing by which any real estate or interest therein is created, aliened, mortgaged, or assigned or by which the title to any real estate may be affected in law or equity, except last wills and leases for one year or for a less time.

Source: R.S.1866, c. 43, § 51, p. 291; R.S.1913, § 6189; C.S.1922, § 5588; C.S.1929, § 76-103; R.S.1943, § 76-203; Laws 2012, LB536, § 28.

(d) FORMALITIES OF EXECUTION

76-214 Deed, memorandum of contract, or land contract; recorded; death certificate filed; statement required; access.

(1) Every grantee who has a deed to real estate recorded and every purchaser of real estate who has a memorandum of contract or land contract recorded 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 and all memoranda of contract and land contracts 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. If a death certificate is recorded as provided in subsection (2) of this section, this statement may require a date of death, the name of the decedent, and whether the title is affected as a result of a transfer on death deed, a joint tenancy deed, or the expiration of a life estate or by any other means. This statement shall be signed and filed by the grantee, the purchaser, or his or her authorized agent. The register of deeds shall forward the statement to the county assessor. If the grantee or purchaser fails to furnish the prescribed 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, pursuant to the rules and regulations of the Tax Commissioner, forward the statement to the Tax Commissioner.

(2)(a) The statement described in subsection (1) of this section shall be filed at the time that a certified or authenticated copy of the grantor's death certificate is filed if such death certificate is required to be filed under section 76-2,126 and the conveyance of real estate was pursuant to a transfer on death deed.

(b) The statement described in subsection (1) of this section shall not be required to be filed at the time that a transfer on death deed is filed or at the time that an instrument of revocation of a transfer on death deed as described in subdivision (a)(1)(B) of section 76-3413 is filed.

(3) Any person shall have access to the statements at the office of the Tax Commissioner, county assessor, or register of deeds if the statements are available 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; Laws 2008, LB965, § 1; Laws 2009, LB348, § 1; Laws 2012, LB536, § 29; Laws 2014, LB780, § 1.
Effective date July 18, 2014.

Cross References

Violation of section, penalty, see section 76-215.

76-215 Statement; failure to furnish; penalty.

Any person who fails to obey the provisions of subsection (1) of section 76-214 shall be deemed guilty of a misdemeanor, and upon conviction thereof

shall be fined in any sum not less than ten dollars nor exceeding five hundred dollars.

Source: Laws 1917, c. 224, § 2, p. 550; C.S.1922, § 5663; C.S.1929, § 76-269; R.S.1943, § 76-215; Laws 1965, c. 456, § 2, p. 1450; Laws 1965, c. 457, § 2, p. 1452; Laws 1994, LB 1275, § 7; Laws 2012, LB536, § 30.

(f) RECORDING

76-238 Deeds and other instruments; recording; when effective as notice; possession of real estate; not effective as notice; when.

(1) Except as otherwise provided in sections 76-3413 to 76-3415, all deeds, mortgages, and other instruments of writing which are required to be or which under the laws of this state may be recorded, shall take effect and be in force from and after the time of delivering such instruments to the register of deeds for recording, and not before, as to all creditors and subsequent purchasers in good faith without notice. All such instruments are void as to all creditors and subsequent purchasers without notice whose deeds, mortgages, or other instruments are recorded prior to such instruments. However, such instruments are valid between the parties to the instrument.

(2) For purposes of this section, possession of agricultural real estate or residential real estate by a party related to the owner of record of the real estate within the third degree of consanguinity or affinity shall not serve as notice to a creditor or subsequent purchaser in any case in which such party is claiming rights in such real estate pursuant to a lease (a) entered into on or after July 16, 2004; (b) purporting to extend beyond a term of one year; and (c) which has not satisfied the requirements of section 76-211, unless the creditor or subsequent purchaser, in advance of recording a deed, mortgage, or other instrument, has received a written copy of such lease.

(3) For purposes of this section:

(a) Agricultural products includes grain and feed crops; forages and sod crops; and animal production, including breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry;

(b) Agricultural real estate means land which is primarily used for the production of agricultural products, including waste land lying in or adjacent to and in common ownership with land used for the production of agricultural products;

(c) Related within the third degree of consanguinity or affinity includes parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and spouses of the same and any partnership, limited liability company, or corporation in which all of the partners, members, or shareholders are related within the third degree of consanguinity or affinity; and

(d) Residential real estate means real estate containing not more than four units designed for use for residential purposes. A condominium unit that is otherwise residential real estate remains so even though the condominium

development contains more than four dwelling units or units for nonresidential purposes.

Source: R.S.1866, c. 43, § 16, p. 283; Laws 1887, c. 30, § 16, p. 369; R.S.1913, § 6213; C.S.1922, § 5612; C.S.1929, § 76-218; Laws 1941, c. 154, § 1, p. 599; C.S.Supp.,1941, § 76-218; R.S.1943, § 76-238; Laws 2004, LB 155, § 6; Laws 2012, LB536, § 32.

76-238.01 Mortgages; interest in real estate included; debts that may be secured; future advances; optimal future advance; notice; filing; limitation.

(1) Any interest in real property capable of being transferred may be mortgaged to secure (a) existing debts or obligations, (b) debts or obligations created simultaneously with the execution of the mortgage, (c) future advances necessary to protect the security, even though such future advances cause the total indebtedness to exceed the maximum amount stated in the mortgage, or (d) any future advances to be made at the option of the parties in any amount unless, except as otherwise provided under subsection (2) or (3) of this section, a maximum amount of total indebtedness to be secured is stated in the mortgage.

(2) Future advances necessary to protect the security shall include, but not be limited to, advances for payment of real property taxes, special assessments, prior liens, hazard insurance premiums, maintenance charges imposed under a condominium declaration or other covenant, and costs of repair, maintenance, or improvements. Future advances necessary to protect the security are secured by the mortgage and have the priority specified in subsection (3) of this section.

(3)(a) Except as provided in subdivision (b) of this subsection, all items identified in subsection (1) of this section are equally secured by the mortgage from the time of filing the mortgage as provided by law and have the same priority as the mortgage over the rights of all other persons who acquire any rights in or liens upon the mortgaged real property subsequent to the time the mortgage was filed.

(b)(i) The mortgagor or his or her successor in title may limit the amount of optional future advances secured by the mortgage under subdivision (1)(d) of this section by filing a notice for record in the office of the register of deeds of each county in which the mortgaged real property or some part thereof is situated. A copy of such notice shall be sent by certified mail to the mortgagee at the address of the mortgagee set forth in the mortgage or, if the mortgage has been assigned, to the address of the most recent assignee reflected in a recorded assignment of the mortgage. The amount of such secured optional future advances shall be limited to not less than the amount actually advanced at the time of receipt of such notice by the mortgagee.

(ii) If any optional future advance is made by the mortgagee to the mortgagor or his or her successor in title after receiving written notice of the filing for record of any trust deed, mortgage, lien, or claim against such mortgaged real property, then the amount of such optional future advance shall be junior to such trust deed, mortgage, lien, or claim. The notice under this subdivision shall be sent by certified mail to the mortgagee at the address of the mortgagee set forth in the mortgage or, if the mortgage has been assigned, to the address of the most recent assignee reflected in a recorded assignment of the mortgage.

(iii) Subdivisions (b)(i) and (ii) of this subsection shall not limit or determine the priority of optional future advances as against construction liens governed by section 52-139.

(4) The reduction to zero or elimination of the debt evidenced by the instruments authorized in this section shall not invalidate the operation of this section as to any future advances unless a notice or release to the contrary is filed for record as provided by law.

Source: Laws 1961, c. 368, § 1, p. 1140; Laws 1974, LB 913, § 1; Laws 1987, LB 136, § 1; Laws 2014, LB788, § 10.
Effective date July 18, 2014.

76-246 Conveyances; power of attorney; how revoked.

No instrument containing a power to convey, or in any manner to affect real estate, executed, acknowledged or proved, and certified and recorded in conformity with the requirements of sections 76-211 to 76-245 and 76-2,126, can be revoked by any act of the party or parties thereto until the instrument of revocation is executed, acknowledged or proved, and certified and filed for record with the register of deeds of the county in which the power is recorded.

Source: R.S.1866, c. 43, § 22, p. 285; Laws 1887, c. 30, § 17, p. 369; R.S.1913, § 6216; C.S.1922, § 5615; C.S.1929, § 76-221; R.S. 1943, § 76-246; Laws 2012, LB536, § 33.

(h) SPECIAL KINDS OF CONVEYANCES

76-277 Conveyances; claims and improvements upon public lands; law applicable.

Sections 76-201 to 76-281 and 76-2,126 apply to the conveyance of all claims and improvements upon the public lands.

Source: R.S.1866, c. 43, § 35, p. 287; R.S.1913, § 6231; C.S.1922, § 5630; C.S.1929, § 76-236; R.S.1943, § 76-277; Laws 2012, LB536, § 34.

Cross References

For other provisions for conveyance of public lands and buildings, see Chapter 72.

(p) DISCLOSURE STATEMENT

76-2,120 Written disclosure statement required, when; contents; delivery; liability; noncompliance; effect; State Real Estate Commission; rules and regulations.

(1) For purposes of this section:

(a) Ground lease coupled with improvements shall mean a lease for a parcel of land on which one to four residential dwelling units have been constructed;

(b) Purchaser shall mean a person who acquires, attempts to acquire, or succeeds to an interest in land;

(c) Residential real property shall mean real property which is being used primarily for residential purposes on which no fewer than one or more than four dwelling units are located; and

(d) Seller shall mean an owner of real property who sells or attempts to sell, including lease with option to purchase, residential real property, whether an individual, partnership, limited liability company, corporation, or trust. A sale of a residential dwelling which is subject to a ground lease coupled with improvements shall be a sale of residential real property for purposes of this subdivision.

(2) Each seller of residential real property located in Nebraska shall provide the purchaser with a written disclosure statement of the real property's condition. The disclosure statement shall be executed by the seller. The requirements of this section shall also apply to a sale of improvements which contain residential real property when the improvements are sold coupled with a ground lease and to any lease with the option to purchase residential real property.

(3) The disclosure statement shall include language at the beginning which states:

(a) That the statement is being completed and delivered in accordance with Nebraska law;

(b) That Nebraska law requires the seller to complete the statement;

(c) The real property's address and legal description;

(d) That the statement is a disclosure of the real property's condition as known by the seller on the date of disclosure;

(e) That the statement is not a warranty of any kind by the seller or any agent representing a principal in the transaction;

(f) That the statement should not be accepted as a substitute for any inspection or warranty that the purchaser may wish to obtain;

(g) That even though the information provided in the statement is not a warranty, the purchaser may rely on the information in deciding whether and on what terms to purchase the real property;

(h) That any agent representing a principal in the transaction may provide a copy of the statement to any other person in connection with any actual or possible sale of the real property; and

(i) That the information provided in the statement is the representation of the seller and not the representation of any agent and that the information is not intended to be part of any contract between the seller and purchaser.

(4) In addition to the requirements of subsection (3) of this section, the disclosure statement shall disclose the condition of the real property and any improvements on the real property, including:

(a) The condition of all appliances that are included in the sale and whether the appliances are in working condition;

(b) The condition of the electrical system;

(c) The condition of the heating and cooling systems;

(d) The condition of the water system;

(e) The condition of the sewer system;

(f) The condition of all improvements on the real property and any defects that materially affect the value of the real property or improvements;

(g) Any hazardous conditions, including substances, materials, and products on the real property which may be an environmental hazard;

(h) Any title conditions which affect the real property, including encroachments, easements, and zoning restrictions;

(i) The utility connections and whether they are public, private, or community; and

(j) The existence of any private transfer fee obligation as defined in section 76-3107.

(5) The disclosure statement shall be completed to the best of the seller's belief and knowledge as of the date the disclosure statement is completed and signed by the seller. If any information required by the disclosure statement is unknown to the seller, the seller may indicate that fact on the disclosure statement and the seller shall be in compliance with this section. On or before the effective date of any contract which binds the purchaser to purchase the real property, the seller shall update the information on the disclosure statement whenever the seller has knowledge that information on the disclosure statement is no longer accurate.

(6) This section shall not apply to a transfer:

(a) Pursuant to a court order, a foreclosure sale, or a sale by a trustee under a power of sale in a deed of trust;

(b) By a trustee in bankruptcy;

(c) To a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(d) By a mortgagee, a beneficiary under a deed of trust, or a seller under a land contract who has acquired the real property at a sale conducted pursuant to a power of sale under a deed of trust, at a sale pursuant to a court-ordered foreclosure, or by a deed in lieu of foreclosure;

(e) By a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust except when the fiduciary is also the occupant or was an occupant of one of the dwelling units being sold;

(f) From one or more co-owners to one or more other co-owners;

(g) Made to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors;

(h) Between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to such a decree;

(i) Pursuant to a merger, consolidation, sale, or transfer of assets of a corporation pursuant to a plan of merger or consolidation filed with the Secretary of State;

(j) To or from any governmental entity;

(k) Of newly constructed residential real property which has never been occupied; or

(l) From a third-party relocation company if the third-party relocation company has provided the prospective purchaser a disclosure statement from the most immediate seller unless the most immediate seller meets one of the exceptions in this section. If a disclosure statement is required, and if a third-party relocation company fails to supply a disclosure statement from its most immediate seller on or before the effective date of any contract which binds the purchaser to purchase the real property, the third-party relocation company shall be liable to the prospective purchaser to the same extent as a seller under this section.

(7) The disclosure statement and any update to the statement shall be delivered by the seller or the agent of the seller to the purchaser or the agent of the purchaser on or before the effective date of any contract which binds the

purchaser to purchase the real property, and the purchaser shall acknowledge in writing receipt of the disclosure statement or update.

(8) The seller shall not be liable under this section for any error, inaccuracy, or omission of any information in a disclosure statement if the error, inaccuracy, or omission was not within the personal knowledge of the seller.

(9) A person representing a principal in the transaction shall not be liable under this section for any error, inaccuracy, or omission of any information in a disclosure statement unless that person has knowledge of the error, inaccuracy, or omission on the part of the seller.

(10) A person licensed as a salesperson or broker pursuant to the Nebraska Real Estate License Act shall not be required to verify the accuracy or completeness of any disclosure statement prepared pursuant to this section, and the only obligation of a buyer's agent pursuant to this section is to assure that a copy of the statement is delivered to the buyer on or before the effective date of any purchase agreement which binds the buyer to purchase the property subject to the disclosure statement. This subsection does not limit the duties and obligations provided in section 76-2418 or in subsection (9) of this section with respect to a buyer's agent.

(11) A transfer of an interest in real property subject to this section may not be invalidated solely because of the failure of any person to comply with this section.

(12) If a conveyance of real property is not made in compliance with this section, the purchaser shall have a cause of action against the seller and may recover the actual damages, court costs, and reasonable attorney's fees. The cause of action created by this section shall be in addition to any other cause of action that the purchaser may have. Any action to recover damages under the cause of action shall be commenced within one year after the purchaser takes possession or the conveyance of the real property, whichever occurs first.

(13) The State Real Estate Commission shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1994, LB 642, § 1; Laws 2002, LB 863, § 1; Laws 2011, LB26, § 13.

Cross References

Nebraska Real Estate License Act, see section 81-885.

(t) FILING OF DEATH CERTIFICATE

76-2,126 Certain conveyances; filing of death certificate and attached cover sheet with register of deeds.

If a conveyance of real estate was pursuant to (1) a transfer on death deed due to the death of the transferor or the death of a surviving joint tenant of the transferor, (2) a joint tenancy deed due to the death of a joint tenant, or (3) the expiration of a life estate, then a death certificate shall be filed with the register of deeds to document the transfer of title to the beneficiary of the transfer on death deed, to the surviving joint tenant or joint tenants, or to the holder of an interest in real estate which receives that interest as a result of the death of a life tenant. If the conveyance of real estate was pursuant to a transfer on death deed, a cover sheet indicating the title of the document, the previously recorded document data, and the grantor, surviving grantee, and legal description of the

property being transferred shall be attached to the death certificate and recorded.

Source: Laws 2012, LB536, § 31; Laws 2013, LB345, § 1; Laws 2014, LB780, § 2.

Effective date July 18, 2014.

ARTICLE 5 ABSTRACTERS

(e) ABSTRACTERS ACT

Section

76-545. Business of abstracting; requirements; certificate of authority; authority; fee.

76-547. Certificates; term; renewal; requirements; fees.

76-549. Abstracters Board of Examiners Cash Fund; created; investment; board members and director; compensation.

76-550. Register and roster of applicants and abstracters.

(e) ABSTRACTERS ACT

76-545 Business of abstracting; requirements; certificate of authority; authority; fee.

Any individual or business entity desiring to engage in the business of abstracting in this state shall make application to the board for a certificate of authority. Such application shall be in a form prepared by the board and shall contain such information as may be necessary to assist the board in determining whether the applicant has complied with the Abstracters Act. Such application shall be accompanied by an application fee of not less than twenty-five dollars or more than two hundred dollars. The board shall establish such fee based on the administrative costs of the board. The applicant shall furnish proof that such applicant is or has employed a registered abstracter and shall provide the name and address of a resident agent for service of process under the act. When this section has been complied with, the board shall issue a certificate of authority in such form as it may prescribe, attesting to the same, and such certificate shall be prominently displayed in the place of business of the applicant.

Source: Laws 1965, c. 453, § 14, p. 1442; Laws 1969, c. 615, § 11, p. 2499; R.S.1943, (1981), § 76-522; Laws 1985, LB 47, § 15; Laws 2002, LB 1071, § 6; Laws 2010, LB1051, § 1.

76-547 Certificates; term; renewal; requirements; fees.

(1) All certificates of authority issued pursuant to section 76-545 shall expire on April 1 of each even-numbered year irrespective of when issued. Such certificates shall be renewed, as provided in this section, for a two-year period upon payment of a renewal fee of not less than fifty dollars or more than four hundred dollars. The board shall establish such fee based on the administrative costs of the board.

(2) All certificates of registration, including duplicate certificates of registration, issued pursuant to section 76-543 shall expire on April 1 of each even-numbered year irrespective of when issued. Such certificates shall be renewed, as provided in this section, for a two-year period upon payment of a renewal fee of not less than twenty dollars or more than two hundred dollars. The board shall establish such fee based on the administrative costs of the board. The

board shall not renew the certificate of registration or duplicate certificate of registration for any registered abstracter who has failed to complete the professional development requirements set forth in section 76-544, unless the registered abstracter has shown good cause why he or she was unable to comply with such requirements. If the board determines that good cause was shown for not completing the professional development requirements, the board shall permit the registered abstracter to make up all outstanding hours of professional development within six months of the renewal of such certificates. If the hours are not completed in six months, such certificates shall be revoked.

(3) Thirty to sixty days prior to the expiration date of the certificates, the board shall cause a notice of expiration and application for renewal, including a statement for the fee for each certificate, to be mailed to each of the holders of such certificates. The notice and application shall be in a form prepared by the board.

Source: Laws 1965, c. 453, § 15, p. 1442; Laws 1973, LB 330, § 4; R.S.1943, (1981), § 76-523; Laws 1985, LB 47, § 17; Laws 2002, LB 1071, § 7; Laws 2005, LB 640, § 1; Laws 2010, LB1051, § 2.

76-549 Abstracters Board of Examiners Cash Fund; created; investment; board members and director; compensation.

(1) All fees collected pursuant to the Abstracters Act shall be deposited in the state treasury to be credited to the Abstracters Board of Examiners Cash Fund which is hereby created. All actual and necessary expenses of the board shall be paid from such fund.

(2) No member of the board shall receive a salary. Each member of the board shall receive as compensation for each day or part thereof of actual service while attending meetings or otherwise engaged upon the business of the board fifty dollars and expenses incurred in the performance of official duties. The director shall be paid a salary to be determined by the board.

(3) Transfers may be made from the Abstracters Board of Examiners Cash Fund to the General Fund at the direction of the Legislature. Any money in the Abstracters Board of Examiners 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 1965, c. 453, § 5, p. 1438; Laws 1969, c. 615, § 6, p. 2497; Laws 1971, LB 25, § 1; Laws 1973, LB 330, § 2; Laws 1981, LB 204, § 147; R.S.1943, (1981), § 76-513; Laws 1985, LB 47, § 19; Laws 2009, First Spec. Sess., LB3, § 52.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

76-550 Register and roster of applicants and abstracters.

The board shall keep a register of the name of each applicant for certification, with his or her place of business and such other information as may be deemed appropriate, including a notation of the action taken by the board thereon, the date upon which the certificate of registration or certificate of authority is issued, and the date of renewal of such certificates. The board shall maintain other records, registers, and files as may be necessary for the proper administration of its duties pursuant to the Abstracters Act. A roster showing

the names and places of business of abstracters holding an operative certificate of registration shall be prepared by the director during the month of June of each even-numbered year, sent to all registered abstracters, and furnished to the public on request at the cost of producing such roster.

Source: Laws 1965, c. 453, § 7, p. 1439; Laws 1981, LB 409, § 7; R.S.1943, (1981), § 76-515; Laws 1985, LB 47, § 20; Laws 2010, LB1051, § 3.

ARTICLE 7 EMINENT DOMAIN

Section

76-710.04. Economic development purpose; restriction on use of eminent domain.

76-710.04 Economic development purpose; restriction on use of eminent domain.

(1) A condemner may not take property through the use of eminent domain under sections 76-704 to 76-724 if the taking is primarily for an economic development purpose.

(2) For purposes of this section, economic development purpose means taking property for subsequent use by a commercial for-profit enterprise or to increase tax revenue, tax base, employment, or general economic conditions.

(3) This section does not affect the use of eminent domain for:

(a) Public projects or private projects that make all or a major portion of the property available for use by the general public or for use as a right-of-way, aqueduct, pipeline, transmission line, or similar use;

(b) Removing harmful uses of property if such uses constitute an immediate threat to public health and safety;

(c) Leasing property to a private person who occupies an incidental part of public property or a public facility, such as a retail establishment on the ground floor of a public building;

(d) Acquiring abandoned property;

(e) Clearing defective property title;

(f) Taking private property for use by a utility or railroad;

(g) Taking private property based upon a finding of blighted or substandard conditions under the Community Development Law if the private property is not agricultural land or horticultural land as defined in section 77-1359; and

(h) Taking private property for a transmission line to serve a privately developed facility generating electricity using wind, solar, biomass, or landfill gas. Nothing in this subdivision shall be construed to grant the power of eminent domain to a private entity.

Source: Laws 2006, LB 924, § 2; Laws 2010, LB1048, § 9.

Cross References

Community Development Law, see section 18-2101.

**ARTICLE 8
CONDOMINIUM LAW**

(c) NEBRASKA CONDOMINIUM ACT
GENERAL PROVISIONS

Section

76-825. Act, how cited.

CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

76-842. Declaration; contents.

76-856. Rights of secured lenders; restrictions on lien.

MANAGEMENT OF CONDOMINIUM

76-874. Lien for assessments.

76-874.01. Payments to escrow account; use.

(c) NEBRASKA CONDOMINIUM ACT
GENERAL PROVISIONS

76-825 Act, how cited.

Sections 76-825 to 76-894 shall be known and may be cited as the Nebraska Condominium Act.

Source: Laws 1983, LB 433, § 1; Laws 1984, LB 1105, § 2; Laws 1993, LB 478, § 12; Laws 2013, LB442, § 2.

CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

76-842 Declaration; contents.

(a) The declaration for a condominium must contain:

(1) the name of the condominium, which must include the word condominium or be followed by the words a condominium, and the name of the association;

(2) the name of every county in which any part of the condominium is situated;

(3) a legally sufficient description of the real estate included in the condominium;

(4) a statement of the anticipated number of units which the declarant reserves the right to create, subject to an amendment of the declaration to add more units pursuant to the Nebraska Condominium Act;

(5) a description of the boundaries of each unit created by the declaration, including the unit's identifying number;

(6) a description of any limited common elements, other than those specified in subdivision (b)(8) of section 76-846;

(7) a general description of any development rights and other special declarant rights defined in subsection (23) of section 76-827 reserved by the declarant;

(8) an allocation to each unit of the allocated interests in the manner described in section 76-844;

(9) any restrictions on use, occupancy, and alienation of the units; and

(10) all matters required by sections 76-843 to 76-846, 76-852, and 76-853, and subsection (d) of section 76-861.

(b) Except as otherwise provided in section 76-856, the declaration may contain any other matters the declarant deems appropriate.

Source: Laws 1983, LB 433, § 18; Laws 2013, LB442, § 3.

76-856 Rights of secured lenders; restrictions on lien.

The declaration may require that all or a specified number or percentage of the mortgagees or beneficiaries of deeds of trust encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (i) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board, or (ii) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except pursuant to section 76-871. The declaration may not provide that a lien on a member's unit for any assessment levied against the unit relates back to the date of filing of the declaration or that such lien takes priority over any mortgage or deed of trust on the unit recorded subsequent to the filing of the declaration and prior to the recording by the association of the notice required under subsection (a) of section 76-874.

Source: Laws 1983, LB 433, § 32; Laws 2013, LB442, § 4.

MANAGEMENT OF CONDOMINIUM

76-874 Lien for assessments.

(a) The association has a lien on a unit for any assessment levied against that unit from the time the assessment becomes due and a notice containing the dollar amount of such lien is recorded in the office where mortgages are recorded. The association's lien may be foreclosed in like manner as a mortgage on real estate but the association shall give reasonable notice of its action to all lienholders of the unit whose interest would be affected. Unless the declaration otherwise provides, fees, charges, late charges, and interest charged pursuant to subdivisions (a)(10), (a)(11), and (a)(12) of section 76-860 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment may be a lien from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration, (ii) a first mortgage or deed of trust on the unit recorded before the notice required under subsection (a) of this section has been recorded for a delinquent assessment for which enforcement is sought, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit. The lien under this section is not subject to the homestead exemption pursuant to section 40-101.

(c) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(d) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments becomes due.

(e) This section does not prohibit actions to recover sums for which subsection (a) of this section creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

(f) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(g) The association upon written request shall furnish to a unit owner a recordable statement setting forth the amount of unpaid assessments against his or her unit. The statement must be furnished within ten business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

Source: Laws 1983, LB 433, § 50; Laws 1984, LB 1105, § 12; Laws 2013, LB442, § 5.

76-874.01 Payments to escrow account; use.

(a) The association may require a person who purchases a unit on or after September 6, 2013, to make payments into an escrow account established by the association until the balance in the escrow account for that unit is in an amount not to exceed six months of assessments.

(b) All payments made under this section and received on or after September 6, 2013, shall be held in an interest-bearing checking account in a bank, savings bank, building and loan association, or savings and loan association in this state under terms that place these payments beyond the claim of creditors of the association. Upon request by a unit owner, an association shall disclose the name of the financial institution and the account number where the payments made under this section are being held. An association may maintain a single escrow account to hold payments made under this section from all of the unit owners. If a single escrow account is maintained, the association shall maintain separate accounting records for each unit owner.

(c) The payments made under this section may be used by the association to satisfy any assessments attributable to a unit owner for which assessment payments are delinquent. To the extent that the escrow deposit or any part thereof is applied to offset any unpaid assessments of a unit owner, the association may require such owner to replenish the escrow deposit.

(d) The association shall return the payments made under this section, together with any interest earned on such payments, to the unit owner when the owner sells the unit and has fully paid all assessments.

(e) Nothing in this section shall prohibit the association from establishing escrow deposit requirements in excess of the amounts authorized in this section pursuant to provisions in the association's declaration.

Source: Laws 2013, LB442, § 6.

ARTICLE 9

DOCUMENTARY STAMP TAX

Section

76-902. Tax; exemptions.

76-903. Design; collection of tax; refund; procedure; disbursement.

76-908. Documentary stamp tax; refund; procedure.

76-902 Tax; exemptions.

The tax imposed by section 76-901 shall not apply to:

- (1) Deeds recorded prior to November 18, 1965;
- (2) Deeds to property transferred by or to the United States of America, the State of Nebraska, or any of their agencies or political subdivisions;
- (3) Deeds which secure or release a debt or other obligation;
- (4) Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded but which do not extend or limit existing title or interest;
- (5)(a) Deeds between spouses, between ex-spouses for the purpose of conveying any rights to property acquired or held during the marriage, or between parent and child, without actual consideration therefor, and (b) deeds to or from a family corporation, partnership, or limited liability company when all the shares of stock of the corporation or interest in the partnership or limited liability company are owned by members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, and their spouses, for no consideration other than the issuance of stock of the corporation or interest in the partnership or limited liability company to such family members or the return of the stock to the corporation in partial or complete liquidation of the corporation or deeds in dissolution of the interest in the partnership or limited liability company. In order to qualify for the exemption for family corporations, partnerships, or limited liability companies, the property shall be transferred in the name of the corporation or partnership and not in the name of the individual shareholders, partners, or members;
- (6) Tax deeds;
- (7) Deeds of partition;
- (8) Deeds made pursuant to mergers, consolidations, sales, or transfers of the assets of corporations pursuant to plans of merger or consolidation filed with the office of Secretary of State. A copy of such plan filed with the Secretary of State shall be presented to the register of deeds before such exemption is granted;
- (9) Deeds made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock;
- (10) Cemetery deeds;
- (11) Mineral deeds;
- (12) Deeds executed pursuant to court decrees;
- (13) Land contracts;
- (14) Deeds which release a reversionary interest, a condition subsequent or precedent, a restriction, or any other contingent interest;
- (15) Deeds of distribution executed by a personal representative conveying to devisees or heirs property passing by testate or intestate succession;
- (16) Transfer on death deeds or revocations of transfer on death deeds;
- (17) Certified or authenticated death certificates;
- (18) Deeds transferring property located within the boundaries of an Indian reservation if the grantor or grantee is a reservation Indian;
- (19) Deeds transferring property into a trust if the transfer of the same property would be exempt if the transfer was made directly from the grantor to

the beneficiary or beneficiaries under the trust. No such exemption shall be granted unless the register of deeds is presented with a signed statement certifying that the transfer of the property is made under such circumstances as to come within one of the exemptions specified in this section and that evidence supporting the exemption is maintained by the person signing the statement and is available for inspection by the Department of Revenue;

(20) Deeds transferring property from a trustee to a beneficiary of a trust;

(21) Deeds which convey property held in the name of any partnership or limited liability company not subject to subdivision (5) of this section to any partner in the partnership or member of the limited liability company or to his or her spouse;

(22) Leases;

(23) Easements;

(24) Deeds which transfer title from a trustee to a beneficiary pursuant to a power of sale exercised by a trustee under a trust deed; or

(25) Deeds transferring property, without actual consideration therefor, to a nonprofit organization that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and is not a private foundation as defined in section 509(a) of the Internal Revenue Code.

Source: Laws 1965, c. 463, § 2, p. 1473; Laws 1969, c. 619, § 1, p. 2506; Laws 1969, c. 620, § 1, p. 2507; Laws 1971, LB 825, § 1; Laws 1974, LB 610, § 1; Laws 1978, LB 815, § 1; Laws 1980, LB 650, § 1; Laws 1983, LB 194, § 2; Laws 1984, LB 795, § 1; Laws 1984, LB 1105, § 23; Laws 1991, LB 193, § 1; Laws 1993, LB 121, § 481; Laws 2001, LB 516, § 5; Laws 2012, LB536, § 35; Laws 2013, LB36, § 1; Laws 2014, LB867, § 7.
Operative date July 18, 2014.

76-903 Design; collection of tax; refund; procedure; disbursement.

The Tax Commissioner shall design such stamps in such denominations as in his or her judgment will be the most advantageous to all persons concerned. When any deed subject to the tax imposed by section 76-901 is offered for recordation, the register of deeds shall ascertain and compute the amount of the tax due thereon and shall collect such amount as a prerequisite to acceptance of the deed for recordation. If a dispute arises concerning the taxability of the transfer, the register of deeds shall not record the deed until the disputed tax is paid. If a disputed tax has been paid, the taxpayer may file for a refund pursuant to section 76-908. The taxpayer may also seek a declaratory ruling pursuant to rules and regulations adopted and promulgated by the Department of Revenue. From each two dollars and twenty-five cents of tax collected pursuant to section 76-901, the register of deeds shall retain fifty cents to be placed in the county general fund and shall remit the balance to the State Treasurer who shall credit ninety-five cents of such amount to the Affordable Housing Trust Fund, twenty-five cents of such amount to the Site and Building Development Fund, twenty-five cents of such amount to the Homeless Shelter Assistance Trust Fund, and thirty cents of such amount to the Behavioral Health Services Fund.

Source: Laws 1965, c. 463, § 3, p. 1473; Laws 1969, c. 618, § 2, p. 2505; Laws 1983, LB 194, § 3; Laws 1985, LB 236, § 2; Laws 1992, LB

1192, § 10; Laws 1997, LB 864, § 16; Laws 2001, LB 516, § 6; Laws 2001, Spec. Sess., LB 3, § 5; Laws 2005, LB 40, § 7; Laws 2011, LB388, § 14.

76-908 Documentary stamp tax; refund; procedure.

Any person paying the documentary stamp tax imposed by section 76-901 may claim a refund if the payment of such tax was (1) the result of a misunderstanding or honest mistake of the taxpayer, (2) the result of a clerical error on the part of the register of deeds or the taxpayer, or (3) invalid for any reason. Within two years after payment of such tax, the taxpayer shall file in the office of the register of deeds of the county in which the tax was paid a written claim on a form prescribed by the Tax Commissioner and evidence in support thereof, stating the reason for the claim. The register of deeds shall, within thirty days after such filing, make a recommendation of approval or denial and forward the recommendation together with a copy of the claim and evidence filed to the Tax Commissioner. Within thirty days after the forwarding of such recommendation the Tax Commissioner shall, upon consideration of the recommendation of the register of deeds and the claim and evidence filed by the taxpayer, render his or her decision approving or rejecting the claim for a refund in whole or in part. A copy of the decision of the Tax Commissioner shall be mailed to the register of deeds and to the last-known address of the taxpayer within ten days after the decision is rendered. Upon approval by the Tax Commissioner of a refund for all or a portion of the documentary stamp tax paid, the register of deeds is authorized to make such refund from the currently collected documentary stamp tax funds presently in the office of the register of deeds. A taxpayer denied a refund under this section, in whole or in part, may appeal the decision of the Tax Commissioner, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1981, LB 179, § 2; Laws 1988, LB 352, § 148; Laws 2012, LB727, § 27.

Cross References

Administrative Procedure Act, see section 84-920.

**ARTICLE 10
TRUST DEEDS**

Section

- 76-1002. Transfers in trust; real property; purpose.
76-1004. Successor trustee; appointment by beneficiary; effect; substitution of trustee; recording; form.
76-1009. Sale of trust property; public auction; bids; postponement of sale; notice.

76-1002 Transfers in trust; real property; purpose.

(1) Transfers in trust of real property may be made to secure (a) existing debts or obligations, (b) debts or obligations created simultaneously with the execution of the trust deed, (c) future advances necessary to protect the security, even though such future advances cause the total indebtedness to exceed the maximum amount stated in the trust deed, (d) any future advances to be made at the option of the parties in any amount unless, except as otherwise provided under subsection (2) or (3) of this section, a maximum

amount of total indebtedness to be secured is stated in the trust deed, or (e) the performance of an obligation of any other person named in the trust deed to a beneficiary.

(2) Future advances necessary to protect the security shall include, but not be limited to, advances for payment of real property taxes, special assessments, prior liens, hazard insurance premiums, maintenance charges imposed under a condominium declaration or other covenant, and costs of repair, maintenance, or improvements. Future advances necessary to protect the security are secured by the trust deed and shall have the priority specified in subsection (3) of this section.

(3)(a) Except as provided in subdivision (b) of this subsection, all items identified in subsection (1) of this section are equally secured by the trust deed from the time of filing the trust deed as provided by law and have the same priority as the trust deed over the rights of all other persons who acquire any rights in or liens upon the trust property subsequent to the time the trust deed was filed.

(b)(i) The trustor or his or her successor in title may limit the amount of optional future advances secured by the trust deed under subdivision (1)(d) of this section by filing a notice for record in the office of the register of deeds of each county in which the trust property or some part thereof is situated. A copy of such notice shall be sent by certified mail to the beneficiary at the address of the beneficiary set forth in the trust deed or, if the trust deed has been assigned, to the address of the most recent assignee reflected in a recorded assignment of the trust deed. The amount of such secured optional future advances shall be limited to not less than the amount actually advanced at the time of receipt of such notice by the beneficiary.

(ii) If any optional future advance is made by the beneficiary to the trustor or his or her successor in title after receiving written notice of the filing for record of any trust deed, mortgage, lien, or claim against such trust property, then the amount of such optional future advance shall be junior to such trust deed, mortgage, lien, or claim. The notice under this subdivision shall be sent by certified mail to the beneficiary at the address of the beneficiary set forth in the trust deed or, if the trust deed has been assigned, to the address of the most recent assignee reflected in a recorded assignment of the trust deed.

(iii) Subdivisions (b)(i) and (ii) of this subsection shall not limit or determine the priority of optional future advances as against construction liens governed by section 52-139.

(4) The reduction to zero or elimination of the obligation evidenced by any of the transfers in trust authorized by this section shall not invalidate the operation of this section as to any future advances unless a notice or release to the contrary is filed for record as provided by law. All right, title, interest, and claim in and to the trust property acquired by the trustor or his or her successors in interest subsequent to the execution of the trust deed shall inure to the trustee as security for the obligation or obligations for which the trust property is conveyed in like manner as if acquired before execution of the trust deed.

Source: Laws 1965, c. 451, § 2, p. 1424; Laws 1984, LB 679, § 17; Laws 1988, LB 984, § 1; Laws 1999, LB 277, § 1; Laws 2002, LB 876,

§ 80; Laws 2002, LB 957, § 31; Laws 2011, LB43, § 1; Laws 2014, LB788, § 11.

Effective date July 18, 2014.

76-1004 Successor trustee; appointment by beneficiary; effect; substitution of trustee; recording; form.

(1) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the register of deeds of each county in which the trust property or some part thereof is situated a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the power, duties, authority, and title of the trustee named in the deed of trust and of any successor trustee.

(2) The substitution shall identify the trust deed by stating the names of the original parties thereto, the date of recordation, the full legal description of the realty affected, and the book and page or computer system reference where the trust deed is recorded, shall state the name of the new trustee, and shall be executed and acknowledged by all of the beneficiaries under the trust deed or their successors in interest.

(3) The recorded substitution shall also contain or have attached to it an affidavit that a copy of the substitution has, by regular United States mail with postage prepaid, been mailed to the last-known address of the trustee being replaced or an affidavit of personal service of a copy thereof or of publication of notice thereof, which notice shall be published one time in a newspaper having general circulation in any county in which the trust property or some part thereof is situated.

(4) Any affidavit contained in or attached to the substitution shall constitute prima facie evidence of the facts required to be stated and conclusive evidence of such facts as to bona fide purchasers and encumbrancers for value of the trust property or of any beneficial interest in the trust deed.

(5) On and after April 3, 1997, no recorded substitution filed for record shall be required to contain or have attached to it an affidavit pursuant to subsection (3) of this section, and any recorded substitution filed for record without containing or having attached to it an affidavit pursuant to such subsection prior to April 3, 1997, shall not be deemed incomplete or defective because such affidavit was not contained therein or attached.

(6) On and after March 4, 2010, there shall be no requirement for a beneficiary, in connection with the recording of the substitution of trustee, to provide notice of the substitution by mail, personal service, publication, or in any other manner to the trustee being replaced, and any recorded substitution filed for record prior to March 4, 2010, without having provided such notice, shall not be deemed incomplete or defective because such notice was not provided.

(7) A substitution of trustee shall be sufficient if made in substantially the following form:

Substitution of Trustee

(insert name and address of new trustee)

is hereby appointed successor trustee under the trust deed executed by as trustor, in which is named beneficiary and as trustee, and filed for record

....., 20....., and recorded in book, page (or computer system reference), Records of County, Nebraska. The trust property affected is legally described as follows:

.....
.....
.....
.....

Signature

Source: Laws 1965, c. 451, § 4, p. 1424; Laws 1984, LB 679, § 18; Laws 1989, LB 334, § 1; Laws 1993, LB 547, § 1; Laws 1995, LB 288, § 2; Laws 1997, LB 284, § 1; Laws 2004, LB 813, § 28; Laws 2010, LB738, § 1.

76-1009 Sale of trust property; public auction; bids; postponement of sale; notice.

On the date and at the time and place designated in the notice of sale, the trustee shall sell the property at public auction to the highest bidder. The attorney for the trustee may conduct the sale. Any person, including the beneficiary, may bid at the sale. Every bid shall be deemed an irrevocable offer. If the purchaser refuses to pay the amount bid by him or her for the property struck off to him or her at the sale, the trustee may again sell the property at any time to the highest bidder, except that notice of the sale shall be given again in the same manner as the original notice of sale was required to be given. The party refusing to pay shall be liable for any loss occasioned thereby, and the trustee may also, in his or her discretion, thereafter reject any other bid of such person.

The person conducting the sale may, for any cause he or she deems expedient, postpone the sale of all or any portion of the property from time to time until it is completed, and in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale. The public declaration of the notice of postponement shall include the new date, time, and place of sale. No other notice of the postponed sale need be given unless the sale is postponed for longer than forty-five days beyond the day designated in the notice of sale, in which event notice thereof shall be given in the same manner as the original notice of sale is required to be given.

Source: Laws 1965, c. 451, § 9, p. 1428; Laws 2004, LB 999, § 45; Laws 2010, LB732, § 4.

**ARTICLE 12
RELOCATION ASSISTANCE**

Section
76-1221. Displaced person, defined.
76-1228. Payment to displaced person; amount.

76-1221 Displaced person, defined.

(1) Displaced person means:

(a) Any person who, on or after April 2, 1989, moves from or moves his or her personal property from real property as a result of a written notice of the

intent to acquire, the initiation of negotiations for, or the acquisition of such real property, in whole or in part, for a publicly financed project;

(b) Any person who, as a result of a publicly financed project, moves from or moves his or her personal property from real property on which such person is a residential tenant, conducts a small business as defined by criteria established by the lead agency which are consistent with regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., as amended, conducts a farm operation, or conducts a business, as a direct result of rehabilitation, demolition, or other displacing activity when such displacement is permanent; or

(c) Solely for purposes of sections 76-1228, 76-1229, and 76-1238, any person who moves from or moves his or her personal property from real property as a direct result of (i) written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation or (ii) the rehabilitation, demolition, or other displacing activity of other real property on which such person conducts a business or a farm operation, when such displacement is permanent.

(2) Displaced person does not include:

(a) A person who is determined by the displacing agency to be in unlawful occupancy of the real property prior to or after the initiation of negotiations for acquisition of the real property or a person who has been evicted for cause;

(b) In any case in which the displacing agency acquires property for a publicly financed project, any person who occupies such property on a rental basis after the property has been acquired by the displacing agency or for a period subject to termination when the property is needed for the project;

(c) A person who moves before the initiation of negotiations for acquisition of the real property unless the agency determines that the person was displaced as a direct result of the program or project;

(d) A person who initially enters into occupancy of the property after the date of its acquisition for the project;

(e) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., as amended;

(f) A person who is not required to relocate permanently as a direct result of a project;

(g) An owner-occupant who moves as a result of the rehabilitation or demolition of the real property or an owner-occupant who moves as a result of an acquisition of real property when the acquisition of the real property meets all the following conditions:

(i) No specific site or real property needs to be acquired, although the agency may limit its search for alternative sites to a general geographic area;

(ii) The real property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the real property within the area is to be acquired within specific time limits;

(iii) The agency will not acquire the real property if negotiations fail to result in an amicable agreement and the owner is so informed in writing; and

(iv) The agency informs the owner in writing of what it believes to be the market value of the real property.

Subdivision (g) of this subsection does not apply to any tenant who must move as a direct result of the acquisition, rehabilitation, or demolition of real property;

(h) An owner-occupant who moves as a result of an acquisition of real property when the acquisition of the real property is for a program or project undertaken by an agency or person that does not have authority to acquire real property by eminent domain, if such agency or person:

(i) Prior to making an offer for the real property, clearly advises the owner that it is unable to acquire the real property if negotiations fail to result in an agreement; and

(ii) Informs the owner in writing of what it believes to be the market value of the real property.

Subdivision (h) of this subsection does not apply to any tenant who must move as a direct result of the acquisition of real property;

(i) A person who the agency determines is not displaced as a direct result of a partial acquisition;

(j) A person who, after receiving a notice of the intent to acquire, the initiation of negotiations, or the acquisition of the real property, is notified in writing that he or she will not be displaced for a project;

(k) A person who retains the right of use and occupancy of the real property for life following its acquisition by the agency;

(l) Tenants required to move as a result of the sale of their dwelling to a person using downpayment assistance authorized by section 102 of the American Dream Downpayment Act, 42 U.S.C. 12821, as amended; or

(m) A person who has otherwise been determined to be ineligible for relocation assistance pursuant to rules and regulations adopted and promulgated according to law by the lead agency and consistent with 49 C.F.R. 24.208, as amended.

Source: Laws 1989, LB 254, § 8; Laws 2011, LB167, § 1.

76-1228 Payment to displaced person; amount.

(1) Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of:

(a) Actual reasonable expenses in moving himself or herself and his or her family, business, farm operation, or other personal property;

(b) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency;

(c) Actual reasonable expenses in searching for a replacement business or farm; and

(d) Actual reasonable expenses necessary to reestablish at its new site a displaced farm, nonprofit organization, or small business as defined by criteria established by the lead agency which are consistent with regulations adopted

and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., as amended, but not to exceed ten thousand dollars.

(2) The lead agency may adopt and promulgate rules and regulations establishing a reasonable maximum payment under subdivision (1)(c) of this section which are consistent with regulations adopted by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., as amended.

Source: Laws 1989, LB 254, § 15; Laws 2011, LB167, § 2.

ARTICLE 15

AGRICULTURAL LANDS, SPECIAL PROVISIONS

(b) TRUSTS HOLDING AGRICULTURAL LANDS

Section

76-1507. Definitions, sections found.

76-1516. Violations; penalty; injunction; Attorney General, county attorney, duties.

76-1517. Repealed. Laws 2011, LB 160, § 5.

(d) REPORTS ON FARMING OR RANCHING

76-1521. Reports; form; contents; Secretary of State; duties.

76-1523. Corporate trustee; fine; when.

(b) TRUSTS HOLDING AGRICULTURAL LANDS

76-1507 Definitions, sections found.

For purposes of sections 76-1507 to 76-1516, unless the context otherwise requires, the definitions found in sections 76-1508 to 76-1514 shall be used.

Source: Laws 1981, LB 9, § 1; Laws 2011, LB160, § 1.

76-1516 Violations; penalty; injunction; Attorney General, county attorney, duties.

Any trust, other than a family trust, authorized trust, or testamentary trust, violating sections 76-1507 to 76-1516 shall upon conviction be punished by a fine of not more than fifty thousand dollars and shall divest itself of any land acquired in violation of sections 76-1507 to 76-1516 within one year after conviction. The courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The Attorney General or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of sections 76-1507 to 76-1516.

Source: Laws 1981, LB 9, § 10; Laws 2011, LB160, § 2.

76-1517 Repealed. Laws 2011, LB 160, § 5.

(d) REPORTS ON FARMING OR RANCHING

76-1521 Reports; form; contents; Secretary of State; duties.

(1) The report required by section 76-1520 shall be on a form provided by the Secretary of State. The Secretary of State may incorporate the form with other forms required to be filed by entities identified in subsection (1) of section

76-1520. If there has been no change in the information contained in the previous report filed by the reporting entity, the reporting entity may so indicate in a space provided on the reporting form for that purpose.

(2) The Secretary of State shall include a list of exemptions to the prohibitions contained in Article XII, section 8, of the Constitution of Nebraska and a means by which persons filing the form may indicate, if applicable, which exemptions apply to the reporting entity. The reporting entity may include or attach a statement indicating the basis upon which the reporting entity claims exemption from the prohibitions contained in Article XII, section 8, of the Constitution of Nebraska.

(3) The Secretary of State shall annually prepare a report indicating the total number of entities reporting under sections 76-1520 to 76-1524, the number of entities reporting as a corporation, as a limited partnership, as a limited liability partnership, as a limited liability company, and as a trust and the basis upon which the reporting entities claim exemption from the prohibitions contained in Article XII, section 8, of the Constitution of Nebraska. The Secretary of State shall deliver the report electronically to the Clerk of the Legislature on or before January 1 each year.

Source: Laws 1998, LB 1193, § 2; Laws 2012, LB782, § 134.

76-1523 Corporate trustee; fine; when.

(1) Any corporate trustee failing to report the information required by section 76-1520 or filing false information shall be punished by a fine of not more than five hundred dollars.

(2) Any fines received 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.

Source: Laws 1998, LB 1193, § 4; Laws 2011, LB160, § 3.

ARTICLE 22

REAL PROPERTY APPRAISER ACT

Section

- 76-2201. Act, how cited.
- 76-2202. Legislative findings.
- 76-2203. Definitions, where found.
- 76-2203.01. Accredited degree-awarding community college, college, or university, defined.
- 76-2206. Appraisal report, defined.
- 76-2207. Repealed. Laws 2010, LB 931, § 30.
- 76-2209. Repealed. Laws 2010, LB 931, § 30.
- 76-2210.03. Completed application, defined.
- 76-2211. Complex residential real property, defined.
- 76-2212.01. Fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, defined.
- 76-2212.02. Financial Institutions Reform, Recovery, and Enforcement Act of 1989, defined.
- 76-2212.03. Jurisdiction of practice, defined.
- 76-2213. Licensed residential real property appraiser, defined.
- 76-2213.01. Uniform Standards of Professional Appraisal Practice, defined.
- 76-2216. Real property appraiser, defined.
- 76-2217.02. Transferred to section 76-2217.04.
- 76-2217.03. Signature, defined.
- 76-2217.04. Trainee real property appraiser, defined.

Section

- 76-2221. Act; exemptions.
- 76-2223. Real Property Appraiser Board; powers and duties; rules and regulations.
- 76-2225. Civil and criminal immunity.
- 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; fingerprints; national criminal history record check; upgraded credential; requirements; scope of practice.
- 76-2228.02. Trainee real property appraiser; direct supervision; supervisory appraiser; qualifications; disciplinary action; effect; appraisal experience log.
- 76-2229. Use of titles; restrictions.
- 76-2229.01. Credential as a registered real property appraiser; applicant; qualifications; upgraded credential; requirements.
- 76-2230. Credential as a licensed residential real property appraiser; applicant; qualifications; fingerprints; national criminal history record check; upgraded credential; requirements; scope of practice.
- 76-2231.01. Credential as a certified residential real property appraiser; applicant; qualifications; fingerprints; national criminal history record check; upgraded credential; requirements; scope of practice.
- 76-2232. Credential as a certified general real property appraiser; applicant; qualifications; fingerprints; national criminal history record check; scope of practice.
- 76-2233. Reciprocity; credential; issuance; when; applicant; duties; fingerprints; national criminal history record check; verification of status.
- 76-2233.01. Nonresident; temporary credential; issuance; when.
- 76-2233.02. Credential; expiration; renewal; fees; random fingerprint audit program.
- 76-2236. Continuing education; requirements.
- 76-2237. Uniform Standards of Professional Appraisal Practice; rules and regulations.
- 76-2238. Disciplinary action; denial of application; grounds.
- 76-2240. Complaints; hearing; decision; order; appeal.
- 76-2241. Fees.
- 76-2249. Directory of appraisers; information; distribution.

76-2201 Act, how cited.

Sections 76-2201 to 76-2250 shall be known and may be cited as the Real Property Appraiser Act.

Source: Laws 1990, LB 1153, § 1; Laws 1991, LB 203, § 6; Laws 1994, LB 1107, § 6; Laws 1999, LB 618, § 1; Laws 2001, LB 162, § 1; Laws 2006, LB 778, § 13; Laws 2014, LB717, § 1.
Operative date April 10, 2014.

76-2202 Legislative findings.

The Legislature finds that as a result of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as the act existed on January 1, 2014, and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Nebraska's laws providing for regulation of real property appraisers require restructuring in order to comply with such acts. Compliance with the acts is necessary to ensure an adequate number of appraisers in Nebraska to conduct appraisals of real estate involved in federally related transactions as defined in such acts.

Source: Laws 1990, LB 1153, § 2; Laws 1991, LB 203, § 7; Laws 1994, LB 1107, § 7; Laws 2006, LB 778, § 14; Laws 2010, LB931, § 1; Laws 2012, LB714, § 1; Laws 2014, LB717, § 2.
Operative date April 10, 2014.

76-2203 Definitions, where found.

For purposes of the Real Property Appraiser Act, the definitions found in sections 76-2203.01 to 76-2219 shall be used.

Source: Laws 1990, LB 1153, § 3; Laws 1991, LB 203, § 8; Laws 1994, LB 1107, § 8; Laws 1999, LB 618, § 2; Laws 2001, LB 162, § 2; Laws 2006, LB 778, § 15; Laws 2014, LB717, § 3.
Operative date April 10, 2014.

76-2203.01 Accredited degree-awarding community college, college, or university, defined.

Accredited degree-awarding community college, college, or university means an institution that is approved or accredited by a regional or national accreditation association or an agency recognized by the United States Secretary of Education.

Source: Laws 2014, LB717, § 4.
Operative date April 10, 2014.

76-2206 Appraisal report, defined.

Appraisal report means any communication, written, oral, or by electronic means, of an appraisal. The testimony of a real property appraiser dealing with the appraiser's analyses, conclusions, or opinions concerning identified real estate or identified real property is deemed to be an oral appraisal report.

Source: Laws 1990, LB 1153, § 6; Laws 2006, LB 778, § 19; Laws 2010, LB931, § 2.

76-2207 Repealed. Laws 2010, LB 931, § 30.**76-2209 Repealed. Laws 2010, LB 931, § 30.****76-2210.03 Completed application, defined.**

Completed application means an application for credentialing has been processed, all statutory requirements for a credential to be awarded have been met by the applicant, and all required documentation is submitted to the board for final consideration.

Source: Laws 2014, LB717, § 5.
Operative date April 10, 2014.

76-2211 Complex residential real property, defined.

Complex residential real property means residential property in which the property to be appraised, the form of ownership, or the market conditions are atypical.

Source: Laws 2014, LB717, § 6.
Operative date April 10, 2014.

76-2212.01 Fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, defined.

Fifteen-hour National Uniform Standards of Professional Appraisal Practice Course means the course as approved by the Appraiser Qualifications Board as

of January 1, 2014, or the equivalent of the course as approved by the Real Property Appraiser Board.

Source: Laws 2014, LB717, § 7.
Operative date April 10, 2014.

76-2212.02 Financial Institutions Reform, Recovery, and Enforcement Act of 1989, defined.

Financial Institutions Reform, Recovery, and Enforcement Act of 1989 means the act as it existed on January 1, 2014.

Source: Laws 2014, LB717, § 8.
Operative date April 10, 2014.

76-2212.03 Jurisdiction of practice, defined.

Jurisdiction of practice means any state, territory, or the District of Columbia in which an appraiser devotes his or her time engaged in real property appraisal activity.

Source: Laws 2014, LB717, § 9.
Operative date April 10, 2014.

76-2213 Licensed residential real property appraiser, defined.

Licensed residential real property appraiser means a person who holds a valid credential as a licensed residential real property appraiser issued under the Real Property Appraiser Act. Licensed residential real property appraiser includes persons defined as licensed real property appraisers prior to April 15, 2010.

Source: Laws 1990, LB 1153, § 13; Laws 1991, LB 203, § 16; Laws 2006, LB 778, § 30; Laws 2007, LB186, § 4; Laws 2010, LB931, § 3.

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, 2014.

Source: Laws 2001, LB 162, § 11; R.S.1943, (2003), § 76-2218.01; Laws 2006, LB 778, § 31; Laws 2007, LB186, § 5; Laws 2008, LB1011, § 2; Laws 2010, LB931, § 4; Laws 2012, LB714, § 2; Laws 2014, LB717, § 10.
Operative date April 10, 2014.

76-2216 Real property appraiser, defined.

Real property appraiser means a person (1) who engages in real property appraisal activity, (2) who advertises or holds himself or herself out to the general public as a real property appraiser, or (3) who offers, attempts, or agrees to perform or performs real property appraisal activity. Real property appraiser includes persons defined as real estate appraisers prior to July 14, 2006.

Source: Laws 1990, LB 1153, § 16; Laws 2001, LB 162, § 8; Laws 2006, LB 778, § 34; Laws 2010, LB931, § 5.

76-2217.02 Transferred to section 76-2217.04.**76-2217.03 Signature, defined.**

Signature means personalized evidence indicating authentication of the work performed by the real property appraiser and the acceptance of the responsibility for content, analyses, and the conclusions in a report.

Source: Laws 2014, LB717, § 11.
Operative date April 10, 2014.

76-2217.04 Trainee real property appraiser, defined.

Trainee real property appraiser means a person who holds a valid credential as a trainee real property appraiser issued under the Real Property Appraiser Act.

Source: Laws 2006, LB 778, § 37; Laws 2008, LB1011, § 3; R.S.1943, (2009), § 76-2217.02; Laws 2014, LB717, § 12.
Operative date April 10, 2014.

76-2221 Act; exemptions.

The Real Property Appraiser Act shall not apply to:

(1) Any real property appraiser who is a salaried employee of (a) the federal government, (b) any agency of the state government or a political subdivision which appraises real estate, (c) any insurance company authorized to do business in this state, or (d) any bank, savings bank, savings and loan association, building and loan association, credit union, or small loan company licensed by the state or supervised or regulated by or through federal enactments covering financial institutions, except that any employee of the entities listed in subdivisions (a) through (d) of this subdivision who signs an appraisal report as a credentialed real property appraiser shall be subject to the act and the Uniform Standards of Professional Appraisal Practice. Any salaried employee of the entities listed in subdivisions (a) through (d) of this subdivision who does not sign an appraisal report as a credentialed real property appraiser shall include the following disclosure prominently with such report: This opinion of value may not meet the minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act;

(2) A person referred to in subsection (1) of section 81-885.16;

(3) Any person who provides assistance (a) in obtaining the data upon which an appraisal is based, (b) in the physical preparation of an appraisal report, such as taking photographs, preparing charts, maps, or graphs, or typing or printing the report, or (c) that does not directly involve the exercise of judgment in arriving at the analyses, opinions, or conclusions concerning real estate or real property set forth in the appraisal report;

(4) Any owner of real estate, employee of the owner, or attorney licensed to practice law in the State of Nebraska representing the owner who renders an estimate or opinion of value of the real estate or any interest in the real estate when such estimate or opinion is for the purpose of real estate taxation, or any other person who renders such an estimate or opinion of value when that estimate or opinion requires a specialized knowledge that a real property appraiser would not have, except that a real property appraiser or a person

licensed under the Nebraska Real Estate License Act is not exempt under this subdivision;

(5) Any owner of real estate, employee of the owner, or attorney licensed to practice law in the State of Nebraska representing the owner who renders an estimate or opinion of value of real estate or any interest in real estate or damages thereto when such estimate or opinion is offered as testimony in any condemnation proceeding, or any other person who renders such an estimate or opinion when that estimate or opinion requires a specialized knowledge that a real property appraiser would not have, except that a real property appraiser or a person licensed under the Nebraska Real Estate License Act is not exempt under this subdivision;

(6) Any owner of real estate, employee of the owner, or attorney licensed to practice law in the State of Nebraska representing the owner who renders an estimate or opinion of value of the real estate or any interest in the real estate when such estimate or opinion is offered in connection with a legal matter involving real property; or

(7) Any person appointed by a county board of equalization to act as a referee pursuant to section 77-1502.01, except that any person who also practices as an independent real property appraiser for others shall be subject to the Real Property Appraiser Act and shall be credentialed prior to engaging in such other appraising. Any appraiser appointed to act as a referee pursuant to section 77-1502.01 and who prepares an appraisal report for the county board of equalization shall not sign such appraisal report as a credentialed appraiser and shall include the following disclosure prominently with such report: This opinion of value may not meet the minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act.

Source: Laws 1990, LB 1153, § 21; Laws 1991, LB 203, § 22; Laws 1994, LB 1107, § 17; Laws 1999, LB 618, § 5; Laws 2001, LB 162, § 13; Laws 2003, LB 131, § 35; Laws 2005, LB 676, § 1; Laws 2006, LB 778, § 41; Laws 2008, LB1011, § 4; Laws 2010, LB931, § 6.

Cross References

Nebraska Real Estate License Act, see section 81-885.

76-2223 Real Property Appraiser Board; powers and duties; rules and regulations.

(1) The Real Property Appraiser Board shall administer and enforce the Real Property Appraiser Act and may:

(a) 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;

(b) 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 testing services, and administer or contract for the administration of examinations approved by the Appraiser Qualifications Board in such places and at such times as deemed appropriate;

(c) Develop the specifications for credentialing examinations, including timing, location, and security necessary to maintain the integrity of the examinations;

(d) Review the procedures and criteria of a contracted testing service to ensure that the testing meets with the approval of the Appraiser Qualifications Board;

(e) Collect all fees required or permitted by the act. The Real Property Appraiser 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;

(f) Establish appropriate administrative procedures for disciplinary proceedings conducted pursuant to the Real Property Appraiser Act;

(g) 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 Real Property Appraiser 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;

(h) 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;

(i) Take appropriate disciplinary action against a credential holder if the Real Property Appraiser Board determines that a credential holder has violated any provision of the act or the Uniform Standards of Professional Appraisal Practice;

(j) Enter into consent decrees and issue cease and desist orders upon a determination that a violation of the act has occurred;

(k) 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;

(l) Establish and adopt minimum standards for appraisals as required under section 76-2237;

(m) 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

(n) Do all other things necessary to carry out the Real Property Appraiser Act.

(2) The board shall also administer and enforce the Nebraska Appraisal Management Company Registration 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; Laws 2008, LB1011, § 6; Laws

2010, LB931, § 7; Laws 2011, LB410, § 21; Laws 2012, LB714, § 3; Laws 2014, LB717, § 13.
Operative date April 10, 2014.

Cross References

Administrative Procedure Act, see section 84-920.

Nebraska Appraisal Management Company Registration Act, see section 76-3201.

76-2225 Civil and criminal immunity.

The members of the board and the board's employees or persons under contract with the board shall be immune from any civil action or criminal prosecution for initiating or assisting in any lawful investigation of the actions of or any disciplinary proceeding concerning a credential holder pursuant to the Real Property Appraiser Act if such action is taken without malicious intent and in the reasonable belief that it was taken pursuant to the powers vested in the members of the board or such employees or persons.

Source: Laws 1990, LB 1153, § 25; Laws 1991, LB 203, § 26; Laws 1994, LB 1107, § 21; Laws 2001, LB 162, § 16; Laws 2006, LB 778, § 45; Laws 2010, LB931, § 8.

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. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Real Property Appraiser 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; Laws 2009, First Spec. Sess., LB3, § 53.

Cross References

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) Applications for credentials, including initial and renewal applications, shall include the applicant's social security number and such other information as the board may require.

(3) 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.

(4) 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 and a completed application has been approved.

(5) 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; Laws 2014, LB717, § 14.

Operative date April 10, 2014.

76-2228 Appraisers; classification.

There shall be five classes of credentials issued to real property appraisers as follows:

(1) Trainee real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2228.01;

(2) Registered real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2229.01;

(3) Licensed residential real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2230;

(4) Certified residential real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2231.01; and

(5) 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; Laws 2008, LB1011, § 7; Laws 2010, LB931, § 9.

76-2228.01 Trainee real property appraiser; applicant; qualifications; fingerprints; national criminal history record check; upgraded credential; requirements; scope of practice.

(1) 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 Real Property Appraiser Board;

(c)(i) Have successfully completed and passed examination for no fewer than seventy-five class hours in Real Property Appraiser Board-approved qualifying education courses as prescribed by rule or regulation of the Real Property Appraiser Board and complete the fifteen-hour National Uniform Standards of

Professional Appraisal Practice Course. 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 qualifying education courses shall be conducted by an accredited degree-awarding community college, college, or university, 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 Real Property Appraiser Board, and shall be, at a minimum, fifteen class hours in length. Each course shall be conducted in a classroom and not online or by correspondence. Each course shall include an examination pertinent to the material presented. Except for the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course, all class hours shall be completed within the five-year period immediately preceding submission of the application; or

(ii) Hold a bachelor's degree or higher in real estate from an accredited degree-awarding college or university that has had all or part of its curriculum approved by the Appraiser Qualifications Board as required core curriculum. If the degree in real estate as approved by the Appraiser Qualifications Board does not satisfy all required qualifying education for credentialing, the remaining class hours shall be completed in Real Property Appraiser Board-approved qualifying education pursuant to subdivision (c)(i) of this subsection;

(d) As prescribed by rule or regulation of the Real Property Appraiser Board, successfully complete a Real Property Appraiser Board-approved seven-hour supervisory appraiser and trainee course within one year immediately preceding the date of application;

(e) Certify that he or she has not surrendered an appraiser credential, or any other registration, license, or certification, held for any other regulatory agency or in any other jurisdiction, in lieu of disciplinary action pending or threatened within the five-year period immediately preceding the date of application;

(f) Certify that his or her appraiser credential, or any other registration, license, or certification, held for any other regulatory agency or in any other jurisdiction, has not been revoked or suspended within the five-year period immediately preceding the date of application;

(g) Not have been convicted of, including a conviction based upon a plea of guilty or nolo contendere:

(i) Any felony or, if so convicted, has had his or her civil rights restored;

(ii) Any crime of fraud, dishonesty, breach of trust, money laundering, misrepresentation, or deceit involving real estate, financial services, or in the making of an appraisal within the five-year period immediately preceding the date of application; or

(iii) A crime which is related to the qualifications, functions, or duties of a real property appraiser within the five-year period immediately preceding the date of application;

(h) Certify that no civil judicial actions, including dismissal with settlement, in connection with real estate, financial services, or in the making of an appraisal have been brought against him or her within the five-year period immediately preceding the date of application;

(i) Demonstrate character and general fitness such as to command the confidence and trust of the public; and

(j) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board.

(2) Prior to engaging in appraisal practice or real property appraisal activity, a trainee real property appraiser shall submit a written request for supervisory appraiser approval on a form approved by the board. The request for supervisory appraiser approval may be made at the time of application or any time after approval as a trainee real property appraiser.

(3) To qualify for an upgraded credential, a trainee real property appraiser shall satisfy the appropriate requirements as follows:

(a) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board; and

(b) Within the twelve months following approval of the applicant's education and experience by the Real Property Appraiser Board for an upgraded credential, pass an appropriate examination approved by the Appraiser Qualifications Board for that upgraded credential, prescribed by rule or regulation of the Real Property Appraiser Board, and administered by a contracted testing service.

(4) To qualify for a credential as a licensed residential real property appraiser, a trainee real property appraiser shall:

(a) Meet the postsecondary educational requirements pursuant to subdivision (1)(b)(i) or (ii) and (1)(c) of section 76-2230;

(b) Successfully complete and pass examination for no fewer than seventy-five additional class hours in board-approved qualifying education courses as prescribed by rule or regulation of the board, or hold a bachelor's degree in real estate from an accredited degree-awarding college or university pursuant to subdivision (1)(d)(ii) of section 76-2230; and

(c) Meet the experience requirements pursuant to subdivision (1)(e) of section 76-2230.

(5) To qualify for a credential as a certified residential real property appraiser, a trainee real property appraiser shall:

(a) Meet the postsecondary educational requirements pursuant to subdivision (1)(b) and (c) of section 76-2231.01;

(b) Successfully complete and pass examination for no fewer than one hundred twenty-five additional class hours in board-approved qualifying education courses as prescribed by rule or regulation of the board, or hold a bachelor's degree in real estate from an accredited degree-awarding college or university pursuant to subdivision (1)(d)(ii) of section 76-2231.01; and

(c) Meet the experience requirements pursuant to subdivision (1)(e) of section 76-2231.01.

(6) To qualify for a credential as a certified general real property appraiser, a trainee real property appraiser shall:

(a) Meet the postsecondary educational requirements pursuant to subdivision (1)(b) and (c) of section 76-2232;

(b) Successfully complete and pass examination for no fewer than two hundred twenty-five additional class hours in board-approved qualifying education courses as prescribed by rule or regulation of the board, or hold a bachelor's degree in real estate from an accredited degree-awarding college or university pursuant to subdivision (1)(d)(ii) of section 76-2232; and

(c) Meet the experience requirements pursuant to subdivision (1)(e) of section 76-2232.

(7) The scope of practice for the trainee real property appraiser shall be limited to the appraisal of those properties that the supervisory certified real property appraiser is permitted to appraise by his or her current credential and that the supervisory appraiser is competent to appraise.

Source: Laws 2006, LB 778, § 49; Laws 2007, LB186, § 12; Laws 2010, LB931, § 10; Laws 2012, LB714, § 4; Laws 2014, LB717, § 15.
Operative date January 1, 2015.

76-2228.02 Trainee real property appraiser; direct supervision; supervisory appraiser; qualifications; disciplinary action; effect; appraisal experience log.

(1) Each trainee real property appraiser's experience shall be subject to direct supervision by a supervisory appraiser. To qualify as a supervisory appraiser, a real property appraiser shall:

(a) Be a certified residential real property appraiser or certified general real property appraiser in good standing;

(b) Have held a certified real property appraiser credential for a minimum of three years immediately preceding the date of the written request for approval as supervisory appraiser;

(c) Have not successfully completed disciplinary action by the board or any other jurisdiction, which action limited the real property appraiser's legal eligibility to engage in real property appraisal activity within three years immediately preceding the date the written request for approval as supervisory appraiser is submitted by the applicant or trainee real property appraiser on a form approved by the board;

(d) As prescribed by rule or regulation of the board, have successfully completed a board-approved seven-hour supervisory appraiser and trainee course within two years immediately preceding the date the written request for approval as supervisory appraiser is submitted by the applicant or trainee real property appraiser on a form approved by the board; and

(e) Certify that he or she understands his or her responsibilities and obligations under the Real Property Appraiser Act as a supervisory appraiser and applies his or her signature to the written request for approval as supervisory appraiser submitted by the applicant or trainee real property appraiser.

(2) The supervisory appraiser shall be responsible for the training and direct supervision of the trainee real property appraiser's experience by:

(a) Accepting responsibility for the report by applying his or her signature and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice;

(b) Reviewing the trainee real property appraiser reports; and

(c) Personally inspecting each appraised property with the trainee real property appraiser as is consistent with his or her scope of practice until the supervisory appraiser determines that the trainee real property appraiser is competent in accordance with the competency rule of the Uniform Standards of Professional Appraisal Practice.

(3) A certified real property appraiser disciplined by the board or any other appraiser regulatory agency in another jurisdiction, which discipline may or may not have limited the real property appraiser's legal eligibility to engage in real property appraisal activity, shall not be eligible as a supervisory appraiser as of the date disciplinary action was imposed against the appraiser by the board or any other appraiser regulatory agency. The certified real property appraiser shall be considered to be in good standing and eligible as a supervisory appraiser upon the successful completion of disciplinary action that does not limit the real property appraiser's legal eligibility to engage in real property appraisal activity, or three years after the successful completion of disciplinary action that limits the real property appraiser's legal eligibility to engage in real property appraisal activity.

(4) The trainee real property appraiser may have more than one supervisory appraiser, but a supervisory appraiser may not supervise more than three trainee real property appraisers at one time.

(5) As prescribed by rule or regulation of the board, an appraisal experience log shall be maintained jointly by the supervisory appraiser and the trainee real property appraiser.

Source: Laws 2014, LB717, § 16.

Operative date January 1, 2015.

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 residential real property appraiser shall assume or use the title licensed residential real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a licensed residential 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. No person other than a trainee real property appraiser shall assume or use the title trainee real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a trainee real property appraiser by this state. A real property appraiser shall state whether he or she is a registered real property

appraiser, licensed residential real property appraiser, certified residential real property appraiser, certified general real property appraiser, or trainee 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 residential real property appraiser, certified residential real property appraiser, certified general real property appraiser, and trainee 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; Laws 2008, LB1011, § 8; Laws 2010, LB931, § 11.

76-2229.01 Credential as a registered real property appraiser; applicant; qualifications; upgraded credential; requirements.

(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 as approved by the Appraiser Qualifications Board as of January 1, 2012, or the equivalent of the course as approved by the Real Property Appraiser Board. The courses of study shall be conducted by an accredited, degree-awarding university, college, or community college, an appraisal society, institute, or association, or such other educational provider as may be approved by the Real Property Appraiser 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) Within the twelve months following approval of the applicant by the Real Property Appraiser Board, pass an examination approved by the Appraiser Qualifications Board as of January 1, 2012, and administered by a contracted testing service 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) To qualify for an upgraded credential, a registered real property appraiser shall satisfy at least one of the appropriate requirements as follows:

(a) For a credential as a licensed residential real property appraiser, he or she shall (i) complete sixty additional hours of designated core curriculum education and (ii) meet the experience requirements pursuant to subdivision (1)(d) of section 76-2230;

(b) For a credential as a certified residential real property appraiser, he or she shall (i) complete one hundred ten additional hours of designated core curriculum education, (ii) meet the experience requirements pursuant to subdivision (1)(d) of section 76-2231.01, and (iii) meet the postsecondary educational requirements pursuant to subdivision (1)(b)(i) or (ii) of section 76-2231.01; or

(c) For a credential as a certified general real property appraiser, he or she shall (i) complete two hundred twenty-five additional hours of designated core curriculum education, (ii) meet the experience requirements pursuant to subdivision (1)(d) of section 76-2232, and (iii) meet the postsecondary educational requirements pursuant to subdivision (1)(b)(i) or (ii) of section 76-2232.

(3) The application for registration shall include the applicant's social security number and such other information as the Real Property Appraiser Board may require.

(4) 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.

(5) 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; Laws 2008, LB1011, § 9; Laws 2010, LB931, § 12; Laws 2012, LB714, § 5.

76-2230 Credential as a licensed residential real property appraiser; applicant; qualifications; fingerprints; national criminal history record check; upgraded credential; requirements; scope of practice.

(1) To qualify for a credential as a licensed residential real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b)(i) Hold an associate's degree, or higher, from an accredited degree-awarding community college, college, or university; or

(ii) Successfully complete thirty semester hours of college-level education, from an accredited degree-awarding community college, college, or university. If an accredited degree-awarding community college, college, or university accepts the College-Level Examination Program and examinations and issues a transcript for the examination showing its approval, it will be considered as credit for the college course;

(c) Have his or her education evaluated for equivalency by one of the following if the college degree is from a foreign country:

(i) An accredited degree-awarding college or university;

(ii) The American Association of Collegiate Registrars and Admissions Officers;

(iii) A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services; or

(iv) A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-awarding college or university;

(d)(i) Have successfully completed and passed examination for no fewer than one hundred fifty class hours in Real Property Appraiser Board-approved qualifying education courses as prescribed by rule or regulation of the Real Property Appraiser Board and complete the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course. 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 qualifying education courses shall be conducted by an accredited degree-awarding community college, college, or university, 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 Real Property Appraiser Board, and shall be, at a minimum, fifteen class hours in length. Each course shall be conducted in a classroom and not online or by correspondence. Each course shall include a closed-book examination pertinent to the material presented; or

(ii) Hold a bachelor's degree or higher in real estate from an accredited degree-awarding college or university that has had all or part of its curriculum

approved by the Appraiser Qualifications Board as required core curriculum. If the degree in real estate as approved by the Appraiser Qualifications Board does not satisfy all required qualifying education for credentialing, the remaining class hours shall be completed in Real Property Appraiser Board-approved qualifying education pursuant to subdivision (d)(i) of this subsection;

(e) Have no fewer than two thousand hours of experience as prescribed by rule or regulation of the Real Property Appraiser Board. The required experience shall be acceptable to the Real Property Appraiser 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 Real Property Appraiser Board concerning the experience shall be presented by the applicant in the form of written reports or file memoranda;

(f) Certify that he or she has not surrendered an appraiser credential, or any other registration, license, or certification, held for any other regulatory agency or in any other jurisdiction, in lieu of disciplinary action pending or threatened within the five-year period immediately preceding the date of application;

(g) Certify that his or her appraiser credential, or any other registration, license, or certification, held for any other regulatory agency or in any other jurisdiction, has not been revoked or suspended within the five-year period immediately preceding the date of application;

(h) Not have been convicted of, including a conviction based upon a plea of guilty or nolo contendere:

(i) Any felony or, if so convicted, has had his or her civil rights restored;

(ii) Any crime of fraud, dishonesty, breach of trust, money laundering, misrepresentation, or deceit involving real estate, financial services, or in the making of an appraisal within the five-year period immediately preceding the date of application; or

(iii) A crime which is related to the qualifications, functions, or duties of a real property appraiser within the five-year period immediately preceding the date of application;

(i) Certify that no civil judicial actions, including dismissal with settlement, in connection with real estate, financial services, or in the making of an appraisal have been brought against him or her within the five-year period immediately preceding the date of application;

(j) Demonstrate character and general fitness such as to command the confidence and trust of the public;

(k) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board; and

(l) Within the twelve months following approval of the applicant's education and experience by the Real Property Appraiser Board, pass a licensed residential real property appraiser examination, certified residential real property appraiser examination, or certified general real property appraiser examination, approved by the Appraiser Qualifications Board, prescribed by rule or

regulation of the Real Property Appraiser Board, and administered by a contracted testing service.

(2) To qualify for an upgraded credential, a licensed residential real property appraiser shall satisfy the appropriate requirements as follows:

(a) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board; and

(b) Within the twelve months following approval of the applicant's education and experience by the Real Property Appraiser Board for an upgraded credential, pass an appropriate examination approved by the Appraiser Qualifications Board for that upgraded credential, prescribed by rule or regulation of the Real Property Appraiser Board, and administered by a contracted testing service.

(3) To qualify for a credential as a certified residential real property appraiser, a licensed residential real property appraiser shall:

(a) Meet the postsecondary educational requirements pursuant to subdivision (1)(b) and (c) of section 76-2231.01;

(b) Successfully complete and pass examination for no fewer than fifty additional class hours in board-approved qualifying education courses as prescribed by rule or regulation of the board, or hold a bachelor's degree in real estate from an accredited degree-awarding college or university pursuant to subdivision (1)(d)(ii) of section 76-2231.01; and

(c) Meet the experience requirements pursuant to subdivision (1)(e) of section 76-2231.01.

(4) To qualify for a credential as a certified general real property appraiser, a licensed residential real property appraiser shall:

(a) Meet the postsecondary educational requirements pursuant to subdivision (1)(b) and (c) of section 76-2232;

(b) Successfully complete and pass examination for no fewer than one hundred fifty additional class hours in board-approved qualifying education courses as prescribed by rule or regulation of the board, or hold a bachelor's degree in real estate from an accredited degree-awarding college or university pursuant to subdivision (1)(d)(ii) of section 76-2232; and

(c) Meet the experience requirements pursuant to subdivision (1)(e) of section 76-2232.

(5) An appraiser holding a valid licensed residential real property appraiser credential shall satisfy the requirements for the trainee real property appraiser credential for a downgraded credential.

(6) The scope of practice for a licensed residential real property appraiser shall be limited to the appraisal of, and review of appraisal of, noncomplex residential real property having no more than four units, if any, with a transaction value of less than one million dollars and complex residential real property having no more than four units, with a transaction value of less than two hundred fifty thousand dollars. The appraisal of subdivisions for which a

development analysis or appraisal is necessary is not included in the scope of practice for a licensed residential real property appraiser.

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; Laws 2008, LB1011, § 10; Laws 2010, LB931, § 13; Laws 2012, LB714, § 6; Laws 2014, LB717, § 17.
Operative date January 1, 2015.

76-2231.01 Credential as a certified residential real property appraiser; applicant; qualifications; fingerprints; national criminal history record check; upgraded credential; requirements; scope of practice.

(1) 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 bachelor's degree, or higher, from an accredited degree-awarding college or university;

(c) Have his or her education evaluated for equivalency by one of the following if the college degree is from a foreign country:

(i) An accredited degree-awarding college or university;

(ii) The American Association of Collegiate Registrars and Admissions Officers;

(iii) A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services; or

(iv) A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-awarding college or university;

(d)(i) Have successfully completed and passed examination for no fewer than two hundred class hours in Real Property Appraiser Board-approved qualifying education courses as prescribed by rule or regulation of the Real Property Appraiser Board and completed the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course. 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 qualifying education courses shall be conducted by an accredited degree-awarding community college, college, or university, 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 Real Property Appraiser Board, and shall be, at a minimum, fifteen class hours in length. Each course shall be conducted in a classroom and not online or by correspondence. Each course shall include a closed-book examination pertinent to the material presented; or

(ii) Hold a bachelor's degree or higher in real estate from an accredited degree-awarding college or university that has had all or part of its curriculum approved by the Appraiser Qualifications Board as required core curriculum. If the degree in real estate as approved by the Appraiser Qualifications Board does not satisfy all required qualifying education for credentialing, the remaining class hours shall be completed in Real Property Appraiser Board-approved qualifying education pursuant to subdivision (d)(i) of this subsection;

(e) Have no fewer than two thousand five hundred hours of experience as prescribed by rule or regulation of the Real Property Appraiser Board. The required experience shall be acceptable to the Real Property Appraiser 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 Real Property Appraiser Board concerning the experience shall be presented by the applicant in the form of written reports or file memoranda;

(f) Certify that he or she has not surrendered an appraiser credential, or any other registration, license, or certification, held for any other regulatory agency or in any other jurisdiction, in lieu of disciplinary action pending or threatened within the five-year period immediately preceding the date of application;

(g) Certify that his or her appraiser credential, or any other registration, license, or certification, held for any other regulatory agency or in any other jurisdiction, has not been revoked or suspended within the five-year period immediately preceding the date of application;

(h) Not have been convicted of, including a conviction based upon a plea of guilty or nolo contendere:

(i) Any felony or, if so convicted, has had his or her civil rights restored;

(ii) Any crime of fraud, dishonesty, breach of trust, money laundering, misrepresentation, or deceit involving real estate, financial services, or in the making of an appraisal within the five-year period immediately preceding the date of application; or

(iii) A crime which is related to the qualifications, functions, or duties of a real property appraiser within the five-year period immediately preceding the date of application;

(i) Certify that no civil judicial actions, including dismissal with settlement, in connection with real estate, financial services, or in the making of an appraisal have been brought against him or her within the five-year period immediately preceding the date of application;

(j) Demonstrate character and general fitness such as to command the confidence and trust of the public;

(k) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board; and

(l) Within the twelve months following approval of the applicant's education and experience by the Real Property Appraiser Board, pass a certified residential real property appraiser examination or certified general real property appraiser examination, approved by the Appraiser Qualifications Board, prescribed by rule or regulation of the Real Property Appraiser Board, and administered by a contracted testing service.

(2) To qualify for an upgraded credential, a certified residential real property appraiser shall satisfy the following requirements:

(a) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board; and

(b) Within the twelve months following approval of the applicant's education and experience by the Real Property Appraiser Board for an upgrade to a certified general real property appraiser credential, pass a certified general real property appraiser examination approved by the Appraiser Qualifications Board, prescribed by rule or regulation of the Real Property Appraiser Board, and administered by a contracted testing service.

(3) To qualify for a credential as a certified general real property appraiser, a certified residential real property appraiser shall:

(a) Meet the postsecondary educational requirements pursuant to subdivision (1)(b) and (c) of section 76-2232;

(b) Successfully complete and pass examination for no fewer than one hundred additional class hours in board-approved qualifying education courses as prescribed by rule or regulation of the board, or hold a bachelor's degree in real estate from an accredited degree-awarding college or university pursuant to subdivision (1)(d)(ii) of section 76-2232; and

(c) Meet the experience requirements pursuant to subdivision (1)(e) of section 76-2232.

(4) An appraiser holding a valid certified residential real property appraiser credential shall satisfy the requirements for the trainee real property appraiser credential and licensed residential real property appraiser credential for a downgraded credential. If requested, evidence acceptable to the Real Property Appraiser Board concerning the experience shall be presented along with an application in the form of written reports or file memoranda.

(5) The scope of practice for a certified residential real property appraiser shall be limited to the appraisal of, and review of appraisal of, residential property having no more than four residential units, without regard to transaction value or complexity. The appraisal of subdivisions for which a development analysis or appraisal is necessary, is not included in the scope of practice for a certified residential real property appraiser.

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; Laws 2008, LB1011, § 11; Laws 2010, LB931, § 14; Laws 2012, LB714, § 7; Laws 2014, LB717, § 18.

Operative date January 1, 2015.

76-2232 Credential as a certified general real property appraiser; applicant; qualifications; fingerprints; national criminal history record check; scope of practice.

(1) 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 bachelor's degree, or higher, from an accredited degree-awarding college or university;

(c) Have his or her education evaluated for equivalency by one of the following if the college degree is from a foreign country:

(i) An accredited degree-awarding college or university;

(ii) The American Association of Collegiate Registrars and Admissions Officers;

(iii) A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services; or

(iv) A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-awarding college or university;

(d)(i) Have successfully completed and passed examination for no fewer than three hundred class hours in Real Property Appraiser Board-approved qualifying education courses as prescribed by rule or regulation of the Real Property Appraiser Board and completed the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course. 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 qualifying education courses shall be conducted by an accredited degree-awarding community college, college, or university, 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 Real Property Appraiser Board, and shall be, at a minimum, fifteen class hours in length. Each course shall be conducted in a classroom and not online or by correspondence. Each course shall include a closed-book examination pertinent to the material presented; or

(ii) Hold a bachelor's degree or higher in real estate from an accredited degree-awarding college or university that has had all or part of its curriculum approved by the Appraiser Qualifications Board as required core curriculum. If the degree in real estate as approved by the Appraiser Qualifications Board does not satisfy all required qualifying education for credentialing, the remaining class hours shall be completed in Real Property Appraiser Board-approved qualifying education pursuant to subdivision (d)(i) of this subsection;

(e) Have no fewer than three thousand hours of experience, of which one thousand five hundred hours shall be in nonresidential appraisal work, as prescribed by rule or regulation of the Real Property Appraiser Board. The required experience shall be acceptable to the Real Property Appraiser 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 Real Property Appraiser Board concerning the experience shall be presented by the applicant in the form of written reports or file memoranda;

(f) Certify that he or she has not surrendered an appraiser credential, or any other registration, license, or certification, held for any other regulatory agency or in any other jurisdiction, in lieu of disciplinary action pending or threatened within the five-year period immediately preceding the date of application;

(g) Certify that his or her appraiser credential, or any other registration, license, or certification, held for any other regulatory agency or in any other jurisdiction, has not been revoked or suspended within the five-year period immediately preceding the date of application;

(h) Not have been convicted of, including a conviction based upon a plea of guilty or nolo contendere:

(i) Any felony or, if so convicted, has had his or her civil rights restored;

(ii) Any crime of fraud, dishonesty, breach of trust, money laundering, misrepresentation, or deceit involving real estate, financial services, or in the making of an appraisal within the five-year period immediately preceding the date of application; or

(iii) A crime which is related to the qualifications, functions, or duties of a real property appraiser within the five-year period immediately preceding the date of application.

(i) Certify that no civil judicial actions, including dismissal with settlement, in connection with real estate, financial services, or in the making of an appraisal have been brought against him or her within the five-year period immediately preceding the date of application;

(j) Demonstrate character and general fitness such as to command the confidence and trust of the public;

(k) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the Real Property Appraiser Board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the Real Property Appraiser Board; and

(l) Within the twelve months following approval of the applicant's education and experience by the Real Property Appraiser Board, pass a certified general real property appraiser examination, approved by the Appraiser Qualifications Board, prescribed by rule or regulation of the Real Property Appraiser Board, and administered by a contracted testing service.

(2) An appraiser holding a valid certified general real property appraiser credential shall satisfy the requirements for the trainee real property appraiser credential, licensed residential real property appraiser credential, and certified residential real property appraiser credential for a downgraded credential. If requested, evidence acceptable to the Real Property Appraiser Board concerning the experience shall be presented along with an application in the form of written reports or file memoranda.

(3) The scope of practice for the certified general real property appraiser is the appraisal of all types of real property that appraiser is competent to appraise.

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; Laws 2008, LB1011, § 12; Laws 2010, LB931, § 15; Laws 2012, LB714, § 8; Laws 2014, LB717, § 19.
Operative date January 1, 2015.

76-2233 Reciprocity; credential; issuance; when; applicant; duties; fingerprints; national criminal history record check; verification of status.

(1) An individual currently credentialed to appraise real estate and real property under the laws of another jurisdiction may obtain a credential as a licensed residential real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser by complying with all of the provisions of the Real Property Appraiser Act relating to the appropriate classification of credentialing.

(2) If, in the determination of the board, the applicant's jurisdiction of practice specified in an application for credentialing meets or exceeds the requirements of this state, and that jurisdiction is determined to be in compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, an applicant of such jurisdiction may, through reciprocity, become credentialed under the Real Property Appraiser Act.

(3) To qualify for reciprocal credentialing, the applicant shall:

(a) Submit evidence of experience as prescribed by rule or regulation of the board. The experience shall be acceptable to the board and subject to review and determination as to conformity with the Uniform Standards of Professional Appraisal Practice. 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;

(b) Certify that disciplinary proceedings are not pending against him or her in any jurisdiction or state the nature of any pending disciplinary proceedings;

(c) Certify that he or she has not surrendered an appraiser credential, or any other registration, license, or certification, held by any other regulatory agency or in any other jurisdiction, in lieu of disciplinary action pending or threatened within the five-year period immediately preceding the date of application;

(d) Certify that his or her appraiser credential, or any other registration, license, or certification, held by any other regulatory agency or in any other jurisdiction, has not been revoked or suspended within the five-year period immediately preceding the date of application;

(e) Not have been convicted of, including a conviction based upon a plea of guilty or nolo contendere:

(i) Any felony or, if so convicted, has had his or her civil rights restored;

(ii) Any crime of fraud, dishonesty, breach of trust, money laundering, misrepresentation, or deceit involving real estate, financial services, or in the making of an appraisal within the five-year period immediately preceding the date of application; or

(iii) A crime which is related to the qualifications, functions, or duties of a real property appraiser within the five-year period immediately preceding the date of application;

(f) Certify that no civil judicial actions, including dismissal with settlement, in connection with real estate, financial services, or in the making of an appraisal have been brought against him or her within the five-year period immediately preceding the date of application;

(g) Demonstrate character and general fitness such as to command the confidence and trust of the public;

(h) Submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the board;

(i) 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; and

(j) Comply with such other terms and conditions as may be determined by the board.

(4) The credential status of an applicant under this section, including current standing and any disciplinary action imposed against his or her credentials, shall be verified through the National Registry of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

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; Laws 2008, LB1011, § 13; Laws 2010, LB931, § 16; Laws 2014, LB717, § 20.

Operative date January 1, 2015.

76-2233.01 Nonresident; temporary credential; issuance; when.

A nonresident may obtain a temporary credential as a licensed residential 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; Laws 2010, LB931, § 17.

76-2233.02 Credential; expiration; renewal; fees; random fingerprint audit program.

(1) A credential issued under the Real Property Appraiser Act other than a temporary credential shall remain in effect until December 31 of the designated year unless surrendered, revoked, suspended, or canceled prior to such date. To renew a valid credential, the credential holder shall file an application on a form approved by the board and pay the prescribed renewal fee and a criminal history record check fee for maintenance of the random fingerprint audit program to the board not later than November 30 of the designated year. In every second year of renewal, as specified in section 76-2236, evidence of completion of continuing education requirements shall accompany renewal application or be on file with the board prior to renewal.

(2) The board shall establish a number of credential holders to be selected at random to submit, along with the application for renewal, two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. A fingerprint-based national criminal history record check shall be conducted through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the board.

(3) If a credential holder fails to apply and meet the requirements for renewal by November 30 of the designated year, such credential holder may obtain a renewal of such credential by satisfying all of the requirements for renewal and paying a late processing fee if such late renewal takes place prior to July 1 of the following year. A credential holder selected at random to submit fingerprint cards or equivalent electronic fingerprints that has applied and met all other requirements for renewal prior to November 30 of the designated year shall not pay a late processing fee if fingerprint cards or equivalent electronic fingerprints are received prior to November 30 of the designated year. The board may refuse to renew any credential if the credential holder has continued to perform real property appraisal activities or other related activities in this state following the expiration of his or her credential.

Source: Laws 1991, LB 203, § 37; Laws 1994, LB 1107, § 33; Laws 2001, LB 162, § 27; Laws 2006, LB 778, § 57; Laws 2010, LB931, § 18; Laws 2014, LB717, § 21.
Operative date April 10, 2014.

76-2236 Continuing education; requirements.

(1) 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.

(2) No more than fourteen hours of approved continuing education activities in each two-year continuing education period shall be taken online or by correspondence. All online courses shall conform to the Appraiser Qualifications Board's criteria.

(3) As prescribed by rule or regulation of the Real Property Appraiser Board and at least once every two years, the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course as approved by the Appraiser Qualifications Board as of January 1, 2014, or the equivalent of the course as approved by the Real Property Appraiser Board, shall be included in the continuing education requirement of each credential holder.

(4) As prescribed by rule or regulation of the board and at least once every four years, a seven-hour report writing update course shall be included in the continuing education requirement of each credential holder.

(5) No more than fourteen hours may be approved by the board as continuing education in each two-year continuing education period for participation, other than as a student, in appraisal educational processes and programs, which includes teaching, program development, authorship of textbooks, or similar activities that are determined by the board to be equivalent to obtaining continuing education. Evidence of participation shall be submitted to the board upon completion of appraisal educational process or program. No preapproval will be granted for participation in appraisal educational processes or programs.

(6) Qualifying education, as approved by the board, successfully completed by a credential holder to fulfill the class-hour requirement to upgrade to a higher classification than his or her current classification, shall be approved by the board as continuing education.

(7) Qualifying education, as approved by the board, taken by a credential holder not to fulfill the class-hour requirement to upgrade to a higher classification, shall be approved by the board as continuing education if the credential holder completes the examination.

(8) A board-approved seven-hour supervisory appraiser and trainee course successfully completed by a certified real property appraiser for approval as a supervisory appraiser shall be approved by the board as continuing education no more than once during each two-year continuing education period.

(9) The Real Property Appraiser 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 or reciprocal 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; Laws 2010, LB931, § 19; Laws 2012, LB714, § 9; Laws 2014, LB717, § 22.
Operative date April 10, 2014.

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 transmitted electronically to each credential holder and shall be made available on the board's web site.

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; Laws 2010, LB931, § 20.

76-2238 Disciplinary action; denial of application; grounds.

The following acts and omissions shall be considered grounds for disciplinary action or denial of an application by the board:

(1) Failing to meet the minimum qualifications for credentialing established by or pursuant to the Real Property Appraiser Act;

(2) Procuring or attempting to procure a credential under the act by knowingly making a false statement, submitting false information, or making a material misrepresentation in an application filed with the board or procuring or attempting to procure a credential through fraud or misrepresentation;

(3) Paying money or other valuable consideration other than the fees provided for by the act to any member or employee of the board to procure a credential;

(4) An act or omission involving real estate or appraisal practice which constitutes dishonesty, fraud, or misrepresentation with or without the intent to substantially benefit the credential holder or another person or with the intent to substantially injure another person;

(5) Failing to demonstrate character and general fitness such as to command the confidence and trust of the public;

(6) Conviction, including a conviction based upon a plea of guilty or nolo contendere, of any felony unless his or her civil rights have been restored;

(7) Entry of a final civil or criminal judgment against a credential holder, including dismissal with settlement, on grounds of fraud, dishonesty, breach of trust, money laundering, misrepresentation, or deceit involving real estate, financial services, or in the making of an appraisal;

(8) Conviction, including a conviction based upon a plea of guilty or nolo contendere, of a crime which is related to the qualifications, functions, or duties of a real property appraiser;

(9) Engaging in the business of real property appraising under an assumed or fictitious name;

(10) Paying a finder's fee or a referral fee to any person in connection with the appraisal of real estate or real property, except that an intracompany payment for business development shall not be considered to be unethical or a violation of this subdivision;

(11) Making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications;

(12) Any violation of the act or any rule or regulation adopted and promulgated pursuant to the act;

(13) Violation of the confidential nature of any information to which a credential holder gained access through employment for evaluation assignments or valuation assignments;

(14) Acceptance of a fee for performing a real property appraisal valuation assignment or evaluation assignment when the fee is or was contingent upon (a) the real property appraiser reporting a predetermined analysis, opinion, or conclusion, (b) the analysis, opinion, conclusion, or valuation reached, or (c) the consequences resulting from the appraisal;

(15) Failure or refusal to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(16) Negligence or incompetence in developing an appraisal, preparing an appraisal report, or communicating an appraisal, including failure to follow the standards and ethical rules adopted by the board;

(17) Failure to maintain, or to make available for inspection and copying, records required by the board;

(18) Demonstrating negligence, incompetence, or unworthiness to act as an appraiser, whether of the same or of a different character as otherwise specified in this section;

(19) Suspension or revocation of an appraisal credential or a license in another regulated occupation, trade, or profession in this or any other jurisdiction;

(20) Failure to comply with terms of a consent agreement or settlement agreement;

(21) Failure to submit or produce books, records, documents, work files, appraisal reports, or other materials requested by the board concerning any matter under investigation;

(22) Failure of an educational provider to produce records, documents, reports, or other materials, including, but not limited to, required student attendance reports, to the board;

(23) Presentation to the board of any check which is returned to the State Treasurer unpaid, whether payment of fee is for an initial or renewal credential or for examination; and

(24) Failure to pass the examination.

Source: Laws 1990, LB 1153, § 38; Laws 1991, LB 203, § 42; Laws 1994, LB 1107, § 39; Laws 2001, LB 162, § 30; Laws 2006, LB 778, § 60; Laws 2010, LB931, § 21; Laws 2014, LB717, § 23.
Operative date April 10, 2014.

76-2240 Complaints; hearing; decision; order; appeal.

(1) The administrative hearing on the allegations in the complaint filed pursuant to section 76-2239 shall be heard by a hearing officer at the time and place prescribed by the board and in accordance with the Administrative Procedure Act. If, at the conclusion of the hearing, the hearing officer determines that the credential holder is guilty of the violation, the board shall take such disciplinary action as the board deems appropriate. Disciplinary actions which may be taken shall include, but not be limited to, revocation, suspension,

probation, admonishment, letter of reprimand, and formal censure, with publication, of the credential holder and may or may not include an education requirement. Costs incurred for an administrative hearing, including fees of counsel, the hearing officer, court reporters, investigators, and witnesses, shall be taxed as costs in such action as the board may direct.

(2) The decision and order of the board shall be final. Any decision or order of the board may be appealed. The appeal shall be on questions of law only and otherwise shall be in accordance with the Administrative Procedure Act.

Source: Laws 1990, LB 1153, § 40; Laws 1991, LB 203, § 44; Laws 1994, LB 1107, § 41; Laws 2001, LB 162, § 32; Laws 2010, LB931, § 22.

Cross References

Administrative Procedure Act, see section 84-920.

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 processing fee of twenty-five dollars for each month or portion of a month the fee is late;
- (5) A temporary credential application fee for a licensed residential real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser of no more than one hundred dollars;
- (6) A pocket card fee of no more than fifty dollars for a licensed residential real property appraiser, certified residential real property appraiser, or certified general real property appraiser holding a temporary credential under the act; and
- (7) A criminal history record check fee of no more than one 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. 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; Laws 2008, LB1011, § 14; Laws

2010, LB931, § 23; Laws 2012, LB714, § 10; Laws 2014, LB717, § 24.

Operative date April 10, 2014.

76-2249 Directory of appraisers; information; distribution.

(1) The board may prepare a printed directory showing the name and place of business of credential holders under the Real Property Appraiser Act. Copies of the directory shall be made available to the public at such reasonable price per copy as may be fixed by the board and shall be provided to federal authorities as required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(2) The board shall provide without charge to any credential holder under the Real Property Appraiser Act a set of rules and regulations adopted and promulgated by the board and any other information which the board deems important in the area of real property appraisal in the State of Nebraska. The information may be printed in a booklet, a pamphlet, or any other form the board determines appropriate. The board may update such material as often as it deems necessary. The board may provide such material to any other person upon request and may charge a fee for the material. The fee shall be reasonable and shall not exceed any reasonable or necessary costs of producing the material for distribution.

Source: Laws 1990, LB 1153, § 49; Laws 1991, LB 203, § 53; Laws 1993, LB 842, § 1; Laws 1994, LB 1107, § 46; Laws 2001, LB 162, § 41; Laws 2006, LB 778, § 69; Laws 2008, LB1011, § 16; Laws 2010, LB931, § 24; Laws 2012, LB714, § 11; Laws 2014, LB717, § 25.

Operative date April 10, 2014.

ARTICLE 23

ONE-CALL NOTIFICATION SYSTEM

Section

76-2301.	Act, how cited.
76-2303.	Definitions, where found.
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76-2301 Act, how cited.

Sections 76-2301 to 76-2331 shall be known and may be cited as the One-Call Notification System Act.

Source: Laws 1994, LB 421, § 1; Laws 2002, LB 1105, § 494; Laws 2013, LB589, § 1; Laws 2014, LB930, § 1.

Effective date July 18, 2014.

76-2303 Definitions, where found.

For purposes of the One-Call Notification System Act, the definitions found in sections 76-2303.01 to 76-2317 shall be used.

Source: Laws 1994, LB 421, § 3; Laws 2013, LB589, § 2.

76-2303.01 Bar test survey, defined.

Bar test survey means a leakage survey completed with a nonconductive piece of equipment made by manually driving small holes in the ground at regular intervals along the route of an underground gas pipe for the purpose of extracting a sample of the ground atmosphere and testing the atmosphere in the holes with a combustible gas detector or other suitable device.

Source: Laws 2013, LB589, § 3.

76-2322 Excavator; notice to center.

An excavator shall serve notice of intent to excavate upon the center by submitting a locate request using a method provided by the center. The center shall inform the excavator of all operators to whom such notice will be transmitted and shall promptly transmit such notice to every operator having an underground facility in the area of intended excavation. The center shall assign an identification number to each notice received.

Source: Laws 1994, LB 421, § 22; Laws 2014, LB736, § 1.
Effective date July 18, 2014.

76-2323 Underground facilities; mark or identify.

(1) Upon receipt of the information contained in the notice pursuant to section 76-2321, an operator shall advise the excavator of the approximate location of underground facilities in the area of the proposed excavation by marking or identifying the location of the underground facilities with stakes, flags, paint, or any other clearly identifiable marking or reference point and shall indicate if the underground facilities are subject to section 76-2331. The location of the underground facility given by the operator shall be within a strip of land eighteen inches on either side of the marking or identification plus one-half of the width of the underground facility. If in the opinion of the operator the precise location of a facility cannot be determined and marked as required, the operator shall provide all pertinent information and field locating assistance to the excavator at a mutually agreed to time. The location shall be marked or identified using color standards prescribed by the center. The operator shall respond no later than two business days after receipt of the information in the notice or at a time mutually agreed to by the parties.

(2) The marking or identification shall be done in a manner that will last for a minimum of five business days on any nonpermanent surface and a minimum of ten business days on any permanent surface. If the excavation will continue for longer than five business days, the operator shall remark or reidentify the location of the underground facility upon the request of the excavator. The request for remarking or reidentification shall be made through the center.

(3) An operator who determines that it does not have any underground facility located in the area of the proposed excavation shall notify the excavator of the determination prior to the date of commencement of the excavation.

Source: Laws 1994, LB 421, § 23; Laws 2014, LB930, § 3.
Effective date July 18, 2014.

76-2324 Excavator; liability for damage; when.

An excavator who fails to give notice of an excavation pursuant to section 76-2321 or who fails to comply with section 76-2331 and who damages an underground facility by such excavation shall be strictly liable to the operator of the underground facility for the cost of all repairs to the underground facility. An excavator who gives the notice and who damages an underground facility shall be liable to the operator for the cost of all repairs to the underground facility unless the damage to the underground facility was due to the operator's failure to comply with section 76-2323. An excavator who fails to give notice of an excavation pursuant to section 76-2321 and who damages an underground facility that is operated by the excavator shall not be in violation of the One-Call Notification System Act.

In addition to any liability provided in this section an operator of a damaged underground facility shall be entitled to any other remedies available at law or in equity provided by statute or otherwise.

Source: Laws 1994, LB 421, § 24; Laws 2014, LB930, § 4.
Effective date July 18, 2014.

76-2325 Violations; civil penalty.

Any person who violates the provisions of section 76-2320, 76-2321, 76-2322, 76-2323, 76-2326, 76-2330, or 76-2331 shall be subject to a civil penalty as follows:

(1) For a violation related to a gas or hazardous liquid underground pipeline facility, an amount not to exceed ten thousand dollars for each violation for each day the violation persists, up to a maximum of five hundred thousand dollars; and

(2) For a violation related to any other underground facility, an amount not to exceed five hundred dollars for each day the violation persists, up to a maximum of five thousand dollars.

An action to recover a civil penalty shall be brought by the Attorney General or a prosecuting attorney on behalf of the State of Nebraska in any court of competent jurisdiction of this state. The trial shall be before the court, which shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, the absence or existence of prior violations, whether the violation was a willful act, any good faith attempt to achieve compliance, and such other matters as justice may require in determining the amount of penalty imposed. All penalties shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1994, LB 421, § 25; Laws 2014, LB930, § 5.
Effective date July 18, 2014.

76-2329 Emergency conditions; bar test survey; notification requirements; liability.

(1) Sections 76-2321 and 76-2323 shall not apply to an excavation made under an emergency condition if all reasonable precautions are taken to protect the underground facilities. If an emergency condition exists, the excavator shall give notification in substantial compliance with section 76-2321 as soon as practical. Upon being notified that an emergency condition exists, each opera-

tor shall provide all reasonably available location information to the excavator as soon as possible. If the emergency condition has arisen through no fault of the excavator, sections 76-2324 and 76-2325 shall not apply and the excavator shall be liable for damage to any underground facility located in the area if the damage occurs because of the negligent acts or omissions of the excavator.

(2) Sections 76-2321 and 76-2323 shall not apply to a bar test survey deemed necessary to address an emergency condition performed by the operator of the gas or hazardous liquid underground pipeline facility or a qualified excavator who has been engaged to work on behalf of the operator in response to a reported or suspected leak of natural gas, propane, or other combustible liquid or gas. If the emergency condition has arisen through no fault of the excavating operator, section 76-2325 shall not apply.

(3) Sections 76-2321 and 76-2323 shall not apply to an excavation deemed necessary to address an emergency condition performed by the operator of the gas or hazardous liquid underground pipeline facility or a qualified excavator who has been engaged to work on behalf of the operator to address a leak of natural gas, propane, or other combustible liquid or gas. In such event, the operator shall give notification in substantial compliance with section 76-2321 prior to the excavation undertaken by the operator to address the emergency condition. Upon being notified that an emergency condition exists, each operator shall provide all reasonably available location information to the excavating operator as soon as possible, but the excavating operator need not wait for such location information prior to excavation or continuing excavation. If the emergency condition has arisen through no fault of the excavating operator, section 76-2325 shall not apply.

Source: Laws 1994, LB 421, § 29; Laws 2013, LB589, § 4.

76-2330 Center; duties.

The center shall:

(1) Maintain adequate records documenting compliance with the requirements of the One-Call Notification System Act, including records of all telephone calls and records of all locate requests for the preceding five years which will be made available and printed upon request of an operator or excavator;

(2) Provide the notification service during normal working hours at a minimum; and

(3) Provide procedures for emergency notification for calls received at other than normal working hours.

Source: Laws 1994, LB 421, § 30; Laws 2014, LB736, § 2.

Effective date July 18, 2014.

76-2331 Underground natural gas transmission line; representative present; excavation; duties.

Unless otherwise agreed by the operator and excavator in writing, no excavation shall be performed within twenty-five feet of an underground natural gas transmission line as defined in 49 C.F.R. 192.3 unless a representative of the operator of the underground natural gas transmission line is present at the planned excavation area. If the representative of the operator fails to appear at the proposed excavation area at the time work is scheduled to commence, the excavator shall notify the operator that the representative failed to appear and

excavation operations can begin if reasonable precautions are taken to protect the underground facility. This section does not prohibit an operator from either voluntarily having its representative present during excavation or from entering into an agreement voluntarily with an excavator that allows an operator representative to be present during excavation.

Source: Laws 2014, LB930, § 2.
Effective date July 18, 2014.

ARTICLE 24 AGENCY RELATIONSHIPS

Section

- 76-2402. Definitions, where found.
- 76-2404.01. Asset management company, defined.
- 76-2405. Brokerage relationship, defined.
- 76-2407. Client, defined.
- 76-2416. Licensee; act as agent, when; agency relationships authorized; compensation, when.
- 76-2417. Seller's agent or landlord's agent; powers and duties; confidentiality; immunity; disclosures required.
- 76-2418. Buyer's agent or tenant's agent; powers and duties; confidentiality; immunity; disclosures required.
- 76-2421. Licensee offering brokerage services; duties.
- 76-2422. Written agreements for brokerage services; when required.
- 76-2422.01. Licensee; asset management company client; exempt from certain requirements.
- 76-2423. Representation; commencement and termination; when.
- 76-2425. Violation; unfair trade practice; commission; powers.
- 76-2427. Designated broker; appointment of limited agent; effect.
- 76-2429. Sections; supersede common law; extent; construction.
- 76-2430. Commission; rules and regulations.

76-2402 Definitions, where found.

For purposes of sections 76-2401 to 76-2430, the definitions found in sections 76-2403 to 76-2415 shall be used.

Source: Laws 1994, LB 883, § 2; Laws 2011, LB25, § 1.

76-2404.01 Asset management company, defined.

Asset management company means a business firm or association that, pursuant to a contractual agreement, common-law agency agreement, power of attorney, or other legal authorization, sells, conveys, or otherwise offers an interest in real property that belongs to a (1) bank, savings and loan association, or other financial institution created and regulated pursuant to state or federal law, (2) mortgage-holding entity chartered by Congress, or (3) federal, state, or local governmental entity.

Source: Laws 2011, LB25, § 2.

76-2405 Brokerage relationship, defined.

Brokerage relationship shall mean the relationship created between a designated broker and a client pursuant to sections 76-2401 to 76-2430 relating to the performance of services of a broker as defined in section 81-885.01 and shall also mean the relationship created between the client and the designated broker's affiliated licensees pursuant to sections 76-2401 to 76-2430.

Source: Laws 1994, LB 883, § 5; Laws 2011, LB25, § 3.

76-2407 Client, defined.

Client shall mean a seller, landlord, buyer, or tenant who has entered into a brokerage relationship with a licensee pursuant to sections 76-2401 to 76-2430 and is the seller, landlord, buyer, or tenant to whom the licensee owes the duty as set forth in such sections.

Source: Laws 1994, LB 883, § 7; Laws 2002, LB 863, § 3; Laws 2011, LB25, § 4.

76-2416 Licensee; act as agent, when; agency relationships authorized; compensation, when.

(1) When engaged in any of the activities enumerated in subdivision (2) of section 81-885.01, a licensee may act as a limited agent in any transaction as a single agent, subagent, or dual agent. The licensee's general duties and obligations arising from the limited agency relationship shall be disclosed to the seller and the buyer or to the landlord and the tenant pursuant to sections 76-2420 to 76-2422. Alternatively, when engaged in any of the activities enumerated in subdivision (2) of section 81-885.01, a licensee may act as an agent in any transaction in accordance with a written contract as described in subsection (6) of section 76-2422.

(2) A licensee shall be considered a buyer's or tenant's limited agent unless:

(a) The designated broker enters into a written seller's agent or landlord's agent agreement with the party to be represented pursuant to subsection (2) of section 76-2422;

(b) The designated broker enters into a subagency agreement with another designated broker pursuant to subsection (5) of section 76-2422;

(c) The designated broker enters into a written dual agency agreement with the parties to be represented pursuant to subsection (4) of section 76-2422; or

(d) The designated broker enters into a written agency agreement pursuant to subsection (6) of section 76-2422.

(3) Sections 76-2401 to 76-2430 shall not obligate any buyer or tenant to pay compensation to a licensee unless the buyer or tenant has entered into a written agreement with the designated broker specifying the compensation terms in accordance with subsection (3) of section 76-2422.

(4) A licensee may work with a single party in separate transactions pursuant to different relationships, including, but not limited to, selling one property as a seller's agent and working with that seller in buying another property as a buyer's agent or as a subagent if the licensee complies with sections 76-2401 to 76-2430 in establishing the relationships for each transaction.

Source: Laws 1994, LB 883, § 16; Laws 2011, LB25, § 5.

76-2417 Seller's agent or landlord's agent; powers and duties; confidentiality; immunity; disclosures required.

(1) A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations:

(a) To perform the terms of the written agreement made with the client;

(b) To exercise reasonable skill and care for the client;

(c) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

(i) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;

(ii) Except as provided in section 76-2422.01, presenting all written offers to and from the client in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent to lease;

(iii) Disclosing in writing to the client all adverse material facts actually known by the licensee; and

(iv) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(d) To account in a timely manner for all money and property received;

(e) To comply with all requirements of sections 76-2401 to 76-2430, the Nebraska Real Estate License Act, and any rules and regulations promulgated pursuant to such sections or act; and

(f) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes and regulations.

(2) A licensee acting as a seller's or landlord's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a seller's or landlord's agent for making any required or permitted disclosure.

(3)(a) A licensee acting as a seller's or landlord's agent owes no duty or obligation to a buyer, a tenant, or a prospective buyer or tenant, except that a licensee shall disclose in writing to the buyer, tenant, or prospective buyer or tenant all adverse material facts actually known by the licensee. The adverse material facts may include, but are not limited to, adverse material facts pertaining to: (i) Any environmental hazards affecting the property which are required by law to be disclosed; (ii) the physical condition of the property; (iii) any material defects in the property; (iv) any material defects in the title to the property; or (v) any material limitation on the client's ability to perform under the terms of the contract.

(b) A seller's or landlord's agent owes no duty to conduct an independent inspection of the property for the benefit of the buyer, tenant, or prospective buyer or tenant and owes no duty to independently verify the accuracy or completeness of any statement made by the client or any independent inspector.

(4) A seller's or landlord's agent may show alternative properties not owned by the client to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the client.

(5)(a) A seller or landlord may agree in writing with a seller's or landlord's agent that other designated brokers may be retained and compensated as subagents.

(b) Any designated broker acting as a subagent on the seller's or landlord's behalf shall be a limited agent with the obligations and responsibilities set forth in subsections (1) through (4) of this section.

Source: Laws 1994, LB 883, § 17; Laws 2002, LB 863, § 4; Laws 2011, LB25, § 6.

Cross References

Nebraska Real Estate License Act, see section 81-885.

76-2418 Buyer's agent or tenant's agent; powers and duties; confidentiality; immunity; disclosures required.

(1) A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:

- (a) To perform the terms of any written agreement made with the client;
- (b) To exercise reasonable skill and care for the client;
- (c) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:
 - (i) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek other properties while the client is a party to a contract to purchase property or to a lease or letter of intent to lease;
 - (ii) Except as provided in section 76-2422.01, presenting all written offers to and from the client in a timely manner regardless of whether the client is already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;
 - (iii) Disclosing in writing to the client adverse material facts actually known by the licensee; and
 - (iv) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;
- (d) To account in a timely manner for all money and property received;
- (e) To comply with all requirements of sections 76-2401 to 76-2430, the Nebraska Real Estate License Act, and any rules and regulations promulgated pursuant to such sections or act; and
- (f) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

(2) A licensee acting as a buyer's or tenant's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a buyer's or tenant's agent for making any required or permitted disclosure.

(3)(a) A licensee acting as a buyer's or tenant's agent owes no duty or obligation to a seller, a landlord, or a prospective seller or landlord, except that the licensee shall disclose in writing to any seller, landlord, or prospective seller or landlord all adverse material facts actually known by the licensee. The adverse material facts may include, but are not limited to, adverse material facts concerning the client's financial ability to perform the terms of the transaction.

(b) A buyer's or tenant's agent owes no duty to conduct an independent investigation of the client's financial condition for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of statements made by the client or any independent inspector.

(4) A buyer's or tenant's agent may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client. This section shall not be construed to prohibit a buyer's or tenant's agent from showing competing buyers or tenants the same property and from assisting competing buyers or tenants in attempting to purchase or lease a particular property.

(5)(a) A client may agree in writing with a buyer's or tenant's agent that other designated brokers may be retained and compensated as subagents.

(b) Any designated broker acting as a subagent on the buyer's or tenant's behalf shall be a limited agent with the obligations and responsibilities set forth in subsections (1) through (4) of this section.

Source: Laws 1994, LB 883, § 18; Laws 2002, LB 863, § 5; Laws 2011, LB25, § 7.

Cross References

Nebraska Real Estate License Act, see section 81-885.

76-2421 Licensee offering brokerage services; duties.

(1) At the earliest practicable opportunity during or following the first substantial contact with a seller, landlord, buyer, or tenant who has not entered into a written agreement for brokerage services with a designated broker, the licensee who is offering brokerage services to that person or who is providing brokerage services for that property shall:

(a) Provide that person with a written copy of the current brokerage disclosure pamphlet which has been prepared and approved by the commission; and

(b) Disclose in writing to that person the types of brokerage relationships the designated broker and affiliated licensees are offering to that person or disclose in writing to that person which party the licensee is representing.

(2) When a seller, landlord, buyer, or tenant has already entered into a written agreement for brokerage services with a designated broker or when a buyer or tenant has a brokerage relationship under sections 76-2401 to 76-2430 without a written agreement, no other licensee shall be required to make the disclosures required by this section.

(3) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a licensee working as an agent or subagent of the seller or landlord with a buyer or tenant who is not represented by a licensee shall provide a written disclosure to the customer which contains the following:

(a) A statement that the licensee is an agent for the seller or landlord and is not an agent for the customer; and

(b) A list of the tasks that the agent acting as a seller's or landlord's agent or subagent may perform with the customer.

(4) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a licensee working as an agent or subagent of the buyer or tenant with a seller or landlord who is not represented by a licensee shall provide a written disclosure to the customer which contains the following:

(a) A statement that the licensee is an agent for the buyer or tenant and is not an agent for the customer; and

(b) A list of the tasks that the agent acting as a buyer's or tenant's agent or subagent may perform with the customer.

(5) The written disclosure required pursuant to subsections (1), (3), and (4) of this section shall contain a signature block for the client or customer to acknowledge receipt of the disclosure. The customer's acknowledgment of disclosure shall not constitute a contract with the licensee. If the customer fails or refuses to sign the disclosure, the licensee shall note that fact on a copy of the disclosure and retain the copy.

(6) A licensee shall not be required to give the written disclosures required by this section to a corporation, limited liability company, partnership, limited liability partnership, or similar entity or to any entity which, if doing business in the State of Nebraska, would be required to be registered with the Secretary of State when such corporation, limited liability company, partnership, limited liability partnership, or entity is purchasing, leasing, or selling real property (a) on which there are five or more residential dwelling units, (b) which is subdivided for five or more residential dwelling units, or (c) any portion of which is zoned or assessed by the county assessor as commercial or industrial property.

(7) Disclosures made in accordance with sections 76-2401 to 76-2430 shall be sufficient to disclose brokerage relationships to the public.

Source: Laws 1994, LB 883, § 21; Laws 2002, LB 863, § 7; Laws 2011, LB25, § 8.

76-2422 Written agreements for brokerage services; when required.

(1) All written agreements for brokerage services on behalf of a seller, landlord, buyer, or tenant shall be entered into by the designated broker on behalf of that broker and affiliated licensees, except that the designated broker may authorize affiliated licensees in writing to enter into the written agreements on behalf of the designated broker. A copy of a written agreement for brokerage services shall be left with the client or clients.

(2) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to establish a single agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. Except as provided in section 76-2422.01, the agreement shall include a licensee's duties and responsibilities specified in section 76-2417, the terms of compensation, a fixed date of expiration of the agreement, and whether an offer of subagency may be made to any other designated broker, except that if a licensee is a limited seller's agent for a builder, the terms of compensation may be established for a specific new construction property on or before the builder's acceptance of a contract to sell.

(3) Before or while engaging in any of the acts enumerated in subdivision (2) of section 81-885.01, a designated broker acting as a single agent for a buyer or tenant may enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 76-2418, the terms of compensation, a fixed date of expiration of the agreement, and whether an offer of subagency may be made to any other designated broker.

(4) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to act as a dual agent shall obtain the written consent of the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent. The consent shall include a licensee's duties and responsibilities specified in section 76-2419. The requirements of this subsection are met as to a seller or landlord if the written agreement entered into with the seller or landlord complies with this subsection. The requirements of this subsection are met as to a buyer or tenant if a consent or buyer's or tenant's agency agreement is signed by a potential buyer or tenant which complies with this subsection. The consent of the buyer or tenant does not need to refer to a specific property and may refer generally to all properties for which the buyer's or tenant's agent may also be acting as a seller's or landlord's agent and would be a dual agent. If a licensee is acting as a dual agent with regard to a specific property, the seller and buyer or landlord and tenant shall confirm in writing the dual-agency status and the party or parties responsible for paying any compensation prior to or at the time a contract to purchase property or a lease or letter of intent to lease is entered into for the specific property.

(5) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to act as a subagent shall enter into a written contract with the primary designated broker for the client. If a designated broker has made a unilateral offer of subagency, another designated broker can enter into the subagency relationship by the act of disclosing to the customer that he or she is a subagent of the client.

(6) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker who intends to establish an agency relationship with any party or parties to a transaction in which the designated broker's duties and responsibilities exceed those contained in sections 76-2417 and 76-2418 shall enter into a written agency agreement with a party or parties to the transaction to perform services on their behalf. The agreement shall specify the agent's duties and responsibilities, including any duty of confidentiality, and the terms of compensation. Any agreement under this subsection shall be subject to the common-law requirements of agency applicable to real estate licensees.

Source: Laws 1994, LB 883, § 22; Laws 2002, LB 863, § 8; Laws 2005, LB 88, § 1; Laws 2011, LB25, § 9.

76-2422.01 Licensee; asset management company client; exempt from certain requirements.

(1) A licensee shall be exempt from the requirements of subdivision (1)(c)(ii) of section 76-2417 and subdivision (1)(c)(ii) of section 76-2418 if the client to whom the written offer is required to be presented by such licensee is an asset management company.

(2) A licensee shall be exempt from the provision contained in subsection (2) of section 76-2422 that requires the inclusion of specific duties and responsibilities specified in section 76-2417 in the written agreement if the client is an asset management company.

Source: Laws 2011, LB25, § 10.

76-2423 Representation; commencement and termination; when.

(1)(a) The relationships set forth in sections 76-2401 to 76-2430 shall commence at the time that the licensee begins representing a client and continue until performance or completion of the representation.

(b) If the representation is not performed or completed for any reason, the relationship shall end at the earlier of:

- (i) The date of expiration agreed upon by the parties; or
- (ii) The termination or relinquishment of the relationship by the parties.

(2) Except as otherwise agreed in writing, a licensee shall owe no further duty or obligation after termination or expiration of the contract or representation or completion of performance except the duties of:

(a) Accounting for all money and property related to and received during the relationship; and

(b) Keeping confidential all information received during the course of the relationship which was made confidential by sections 76-2401 to 76-2430, by instructions from the client, or by the policy of the designated broker unless:

(i) The client to whom the information pertains grants written consent to disclose the information; or

(ii) Disclosure of the information is required by law.

Source: Laws 1994, LB 883, § 23; Laws 2011, LB25, § 11.

76-2425 Violation; unfair trade practice; commission; powers.

Violation of any provision of sections 76-2401 to 76-2430 by a licensee shall constitute an unfair trade practice pursuant to section 81-885.24 for which the commission may investigate and take administrative action against the licensee pursuant to the Nebraska Real Estate License Act.

Source: Laws 1994, LB 883, § 25; Laws 2011, LB25, § 12.

Cross References

Nebraska Real Estate License Act, see section 81-885.

76-2427 Designated broker; appointment of limited agent; effect.

A designated broker entering into a limited agency agreement with a client for the listing of property or for the purpose of representing that person in the buying, selling, exchanging, renting, or leasing of real estate may appoint in writing those affiliated licensees who will be acting as limited agents of that client to the exclusion of all other affiliated licensees. A designated broker shall not be considered to be a dual agent solely because he or she makes an appointment under this section, except that any licensee who personally represents both the seller and buyer or both the landlord and tenant in a particular transaction shall be a dual agent and shall be required to comply with the provisions of sections 76-2401 to 76-2430 governing dual agents.

Source: Laws 1994, LB 883, § 27; Laws 2011, LB25, § 13.

76-2429 Sections; supersede common law; extent; construction.

Sections 76-2401 to 76-2430 shall supersede the duties and responsibilities of the parties under the common law, including fiduciary responsibilities of an agent to a principal, except as provided in subsection (6) of section 76-2422.

Sections 76-2401 to 76-2430 shall be construed broadly to accomplish their purposes.

Source: Laws 1994, LB 883, § 29; Laws 2011, LB25, § 14.

76-2430 Commission; rules and regulations.

The commission shall adopt and promulgate rules and regulations to carry out sections 76-2401 to 76-2430.

Source: Laws 1994, LB 883, § 30; Laws 2011, LB25, § 15.

ARTICLE 30

WIND AGREEMENTS

Section

76-3001. Terms, defined.

76-3004. Interest in wind or solar resource; restriction on severance from surface estate.

76-3001 Terms, defined.

For purposes of sections 76-3001 to 76-3004:

(1) Decommissioning security means a security instrument that is posted or given by a wind developer to a municipality or other governmental entity to ensure sufficient funding is available for removal of a wind energy conversion system and reclamation at the end of the useful life of such a system; and

(2) Wind agreement means a right, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, wind easement, wind option, or lease or lease option securing land for the study or production of wind-generated energy or any other instrument executed by or on behalf of any owner of land or air space for the purpose of allowing another party to study the potential for, or to develop, a wind energy conversion system as defined in section 66-909.02 on the land or in the air space.

Source: Laws 2009, LB568, § 1; Laws 2011, LB208, § 5; Laws 2012, LB828, § 16.

76-3004 Interest in wind or solar resource; restriction on severance from surface estate.

No interest in any wind or solar resource located on a tract of land and associated with the production or potential production of wind or solar energy on the tract of land may be severed from the surface estate.

Source: Laws 2009, LB568, § 4; Laws 2012, LB828, § 17.

ARTICLE 31

PRIVATE TRANSFER FEE OBLIGATION ACT

Section

76-3101. Act, how cited.

76-3102. Legislative findings and declarations.

76-3103. Definitions, where found.

76-3104. Environmental covenant, defined.

76-3105. Payee, defined.

76-3106. Private transfer fee, defined.

76-3107. Private transfer fee obligation, defined.

Section

- 76-3108. Transfer, defined.
- 76-3109. Private transfer fee obligation; how treated.
- 76-3110. Recordation of or agreement imposing a private transfer fee obligation; liability.
- 76-3111. Contract for sale of real property subject to private transfer fee obligation; requirements; failure to disclose; rights of buyer.
- 76-3112. Receiver of fee; record document; contents; amendment; payee failure to comply; effect; affidavit; recording; effect.

76-3101 Act, how cited.

Sections 76-3101 to 76-3112 shall be known and may be cited as the Private Transfer Fee Obligation Act.

Source: Laws 2011, LB26, § 1.

76-3102 Legislative findings and declarations.

The Legislature finds and declares that the public policy of this state favors the marketability of real property and the transferability of interests in real property free of title defects or unreasonable restraints on alienation. The Legislature further finds and declares that private transfer fee obligations violate this public policy by impairing the marketability and transferability of real property and by constituting an unreasonable restraint on alienation regardless of the duration of the obligation to pay a private transfer fee, the amount of a private transfer fee, or the method by which any private transfer fee is created or imposed. The Legislature finds and declares that a private transfer fee obligation should not run with the title to property or otherwise bind subsequent owners of property under any common-law or equitable principle.

Source: Laws 2011, LB26, § 2.

76-3103 Definitions, where found.

For purposes of the Private Transfer Fee Obligation Act, the definitions in sections 76-3104 to 76-3108 shall be used.

Source: Laws 2011, LB26, § 3.

76-3104 Environmental covenant, defined.

Environmental covenant means a servitude that imposes activity and use limitations on real property and meets the requirements of section 76-2604.

Source: Laws 2011, LB26, § 4.

76-3105 Payee, defined.

Payee means the person who claims the right to receive or collect a private transfer fee payable under a private transfer fee obligation, whether or not the person has a pecuniary interest in the private transfer fee obligation.

Source: Laws 2011, LB26, § 5.

76-3106 Private transfer fee, defined.

Private transfer fee means a fee or charge payable upon the transfer of an interest in real property, or payable for the right to make or accept such transfer, regardless of whether the fee or charge is a fixed amount or is

determined as a percentage of the value of the property, the purchase price, or other consideration given for the transfer. Private transfer fee does not include:

(1) Any consideration payable by the grantee to the grantor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the grantee based upon any subsequent appreciation, development, or sale of the property, if the additional consideration is payable on a one-time basis only and the obligation to make such payment does not bind successors in title to the property. For purposes of this subdivision, an interest in real property may include a separate mineral estate and its appurtenant surface access rights;

(2) Any commission payable to a licensed real estate broker or salesperson for the transfer of real property pursuant to an agreement between the broker or salesperson and the grantor or the grantee, including any subsequent additional commission for that transfer payable by the grantor or the grantee based upon any subsequent appreciation, development, or sale of the property;

(3) Any interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage or trust deed against real property, including any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage or trust deed, any fees or charges payable to the lender for estoppel letters or certificates, and any shared appreciation interest or profit participation or other consideration payable to the lender in connection with the loan;

(4) Any rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease, including any fee payable to the lessor for consenting to an assignment, subletting, encumbrance, or transfer of the lease;

(5) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon the transfer of the real property to another person;

(6) Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority;

(7) Any fee, charge, assessment, dues, fine, contribution, or other amount payable to a homeowners, condominium, cooperative, mobile home, or property owners association pursuant to a declaration or covenant or bylaw applicable to such association, including fees or charges payable for estoppel letters or certificates issued by the association or its authorized agent;

(8) Any fee, charge, assessment, dues, contribution, or other amount pertaining solely to the purchase or transfer of a club membership relating to real property owned by the member, including any amount determined by reference to the value, purchase price, or other consideration given for the transfer of the real property; or

(9) Any payment required pursuant to an environmental covenant.

Source: Laws 2011, LB26, § 6.

76-3107 Private transfer fee obligation, defined.

Private transfer fee obligation means an obligation arising under a declaration or covenant recorded against the title to real property, or under any other contractual agreement or promise, whether or not recorded, that requires or

purports to require the payment of a private transfer fee upon a subsequent transfer of an interest in the real property.

Source: Laws 2011, LB26, § 7.

76-3108 Transfer, defined.

Transfer means sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property located in this state.

Source: Laws 2011, LB26, § 8.

76-3109 Private transfer fee obligation; how treated.

A private transfer fee obligation recorded or entered into in this state on or after March 11, 2011, does not run with the title to real property and is not binding on or enforceable at law or in equity against any subsequent owner, purchaser, mortgagee, or trustee of any interest in real property as an equitable servitude or otherwise. Any private transfer fee obligation that is recorded or entered into in this state on or after March 11, 2011, is void and unenforceable. This section shall not be construed to mean that a private transfer fee obligation recorded or entered into in this state before March 11, 2011, is presumed valid and enforceable.

Source: Laws 2011, LB26, § 9.

76-3110 Recordation of or agreement imposing a private transfer fee obligation; liability.

Any person who records or enters into an agreement imposing a private transfer fee obligation in his or her favor after March 11, 2011, shall be liable for (1) any and all damages resulting from the imposition of the private transfer fee obligation on the transfer of an interest in the real property, including the amount of any transfer fee paid by a party to the transfer, and (2) all attorney's fees, expenses, and costs incurred by a party to the transfer or mortgagee of the real property to recover any private transfer fee paid or in connection with an action to quiet title. If an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability shall be assessed to the principal rather than the agent.

Source: Laws 2011, LB26, § 10.

76-3111 Contract for sale of real property subject to private transfer fee obligation; requirements; failure to disclose; rights of buyer.

(1) Any contract for the sale of real property subject to a private transfer fee obligation shall include a provision disclosing the existence of that obligation, a description of the obligation, and a statement that private transfer fee obligations are subject to certain prohibitions under the Private Transfer Fee Obligation Act. A contract for sale of real property which does not conform to the requirements of this section shall not be enforceable by the seller against the buyer, nor shall the buyer be liable to the seller for damages under such a contract, and the buyer under such a contract shall be entitled to the return of all deposits made in connection with the sale of the real property.

(2) If a private transfer fee obligation is not disclosed under subsection (1) of this section and a buyer subsequently discovers the existence of such private transfer fee obligation after title to the property has passed to the buyer, the

buyer shall have the right to recover (a) any and all damages resulting from the failure to disclose the private transfer fee obligation, including the amount of any private transfer fee paid by the buyer, or the difference between (i) the market value of the real property if it were not subject to a private transfer fee obligation and (ii) the market value of the real property as subject to a private transfer fee obligation, and (b) all attorney's fees, expenses, and costs incurred by the buyer in seeking the buyer's remedies under this subsection.

(3) Any provision in a contract for sale of real property that purports to waive the rights of a buyer under this section shall be void.

Source: Laws 2011, LB26, § 11.

76-3112 Receiver of fee; record document; contents; amendment; payee failure to comply; effect; affidavit; recording; effect.

(1) For a private transfer fee obligation in existence prior to March 11, 2011, the receiver of the fee shall, within thirty days after March 11, 2011, or before any transfer of real property subject to the private transfer fee, whichever period is shorter, record against the real property subject to the private transfer fee obligation a separate document in the register of deeds office of the county in which the real property is located that meets all of the following requirements:

(a) The title of the document shall be "Notice of Private Transfer Fee Obligation" in at least fourteen-point, boldface type;

(b) The amount, if the private transfer fee is a flat amount, or the percentage of the sales price constituting the cost of the private transfer fee, or such other basis by which the private transfer fee is to be calculated;

(c) The date or circumstances under which the private transfer fee obligation expires, if any;

(d) The purpose for which the funds from the private transfer fee obligation will be used;

(e) The name of the person to whom funds are to be paid and specific contact information regarding where the funds are to be sent;

(f) The acknowledged signature of the payee; and

(g) The legal description of the real property purportedly burdened by the private transfer fee obligation.

(2) The person to whom the private transfer fee is to be paid may file an amendment to the notice of private transfer fee obligation containing new contact information, but such amendment must contain the recording information of the notice of private transfer fee obligation which it amends and the legal description of the property burdened by the private transfer fee obligation.

(3) If the payee fails to comply fully with subsection (1) of this section, the grantor of any real property burdened by the private transfer fee obligation may proceed with the transfer of any interest in the real property to any grantee and in so doing shall be deemed to have acted in good faith and shall not be subject to any obligations under the private transfer fee obligation. In such event, any transfer of the real property thereafter shall be free and clear of the private transfer fee and private transfer fee obligation.

(4) If the payee fails to provide a written statement of the private transfer fee payable within thirty days after the date of a written request for the same sent

to the address shown in the notice of private transfer fee obligation, then the grantor, on recording of the affidavit required under subsection (5) of this section, may transfer any interest in the real property to any grantee without payment of the private transfer fee and shall not be subject to any further obligations under the private transfer fee obligation. In such event, any transfer of the real property shall be free and clear of the private transfer fee and private transfer fee obligation.

(5) An affidavit stating the facts enumerated under subsection (6) of this section shall be recorded in the office of the register of deeds in the county in which the real property is situated prior to or simultaneously with a transfer pursuant to subsection (4) of this section of real property unburdened by a private transfer fee obligation. An affidavit filed under this subsection shall state that the affiant has actual knowledge of, and is competent to testify to, the facts in the affidavit and shall include the legal description of the real property burdened by the private transfer fee obligation, the name of the owner of such real property at the time of the signing of such affidavit, a reference by recording information to the instrument of record containing the private transfer fee obligation, and an acknowledgment that the affiant is testifying under penalty of perjury.

(6) When recorded, an affidavit as described in subsection (5) of this section shall constitute prima facie evidence that:

(a) A request for the written statement of the private transfer fee payable in order to obtain a release of the fee imposed by the private transfer fee obligation was sent to the address shown in the notification; and

(b) The entity listed on the notice of private transfer fee obligation failed to provide the written statement of the private transfer fee payable within thirty days after the date of the notice sent to the address shown in the notification.

Source: Laws 2011, LB26, § 12.

ARTICLE 32

NEBRASKA APPRAISAL MANAGEMENT COMPANY REGISTRATION ACT

Section

- 76-3201. Act, how cited.
- 76-3202. Terms, defined.
- 76-3203. Registration; application; contents; form; surety bond; renewal.
- 76-3204. Act; exemptions.
- 76-3205. Company not domiciled in state; service of process.
- 76-3206. Board; fees.
- 76-3207. Applicant for registration; fingerprint submission; criminal history record check; costs.
- 76-3208. Prohibited acts.
- 76-3209. Verification of appraiser license or certification.
- 76-3210. Performance of Uniform Standards of Professional Appraisal Practice standard 3 appraisal review.
- 76-3211. Verification of license or certification status.
- 76-3212. Records; retention.
- 76-3213. Completed appraisal report; limit on change.
- 76-3214. Board; issue registration number; maintain list; disclosure on engagement documents.
- 76-3215. Payment of fees; appraiser added to appraiser panel; removal; complaint; hearing; board; duties.
- 76-3216. Board; violations; enforcement actions; fine; considerations.

Section

- 76-3217. Violations; disciplinary hearings; notice; procedure.
76-3218. Rules and regulations.
76-3219. Appraisal Management Company Fund; created; use; investment.
76-3220. Material noncompliance; referral to board.

76-3201 Act, how cited.

Sections 76-3201 to 76-3220 shall be known and may be cited as the Nebraska Appraisal Management Company Registration Act.

Source: Laws 2011, LB410, § 1.

76-3202 Terms, defined.

For purposes of the Nebraska Appraisal Management Company Registration Act:

- (1) Appraisal has the same meaning as in section 76-2204;
- (2) Appraisal Foundation has the same meaning as in section 76-2205;
- (3) Appraisal management company means, in connection with valuing real property collateralizing mortgage loans, mortgages, or trust deeds incorporated into a securitization, any external third party that oversees a network or panel of more than fifteen certified or licensed appraisers in this state or twenty-five or more certified or licensed appraisers nationally within a given year and that is authorized, either by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets:
 - (a) To recruit, select, and retain appraisers;
 - (b) To contract with certified or licensed appraisers to perform real property appraisal activity;
 - (c) To manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for appraisal services provided, and reimbursing appraisers for appraisal services performed; or
 - (d) To review and verify the work of appraisers;
- (4) Appraisal practice has the same meaning as in section 76-2205.01;
- (5) Appraisal report has the same meaning as in section 76-2206;
- (6) Appraisal review means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of a real property appraisal activity, except that a quality control examination of an appraisal report shall not be an appraisal review;
- (7) Appraisal services means residential valuation assignments performed by an individual acting as an appraiser, including, but not limited to, appraisal, appraisal review, or consulting services;
- (8) Appraiser means an individual who holds a license or certification as an appraiser and is expected to perform valuation assignments competently and in a manner that is independent, impartial, and objective;
- (9) Appraiser panel means a group of licensed or certified independent appraisers that have been selected to perform appraisal services for a third party;

(10) Board means the Real Property Appraiser Board;

(11) Consulting service has the same meaning as in section 76-2211.01;

(12) Controlling person means:

(a) An officer or director of, or owner of greater than a ten percent interest in, a corporation, partnership, or other business entity seeking to act or acting as an appraisal management company in this state;

(b) An individual employed, appointed, or authorized by an appraisal management company that has the authority to enter into a contractual relationship with other persons for the performance of services requiring registration as an appraisal management company and that has the authority to enter into agreements with appraisers for the performance of appraisals; or

(c) An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company;

(13) Federal financial institution regulatory agency means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, or the successor of any of such agencies;

(14) Federally related transaction means any real estate-related financial transaction which:

(a) A federal financial institution regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and

(b) Requires the services of an appraiser;

(15) Owned and controlled means direct or indirect ownership or control of more than twenty-five percent of the voting shares of an appraisal management company;

(16) Person means an individual, firm, partnership, limited partnership, limited liability company, association, corporation, or other group engaged in joint business activities, however organized;

(17) Quality control examination means an examination of an appraisal report for compliance and completeness, including grammatical, typographical, or other similar errors;

(18) Real estate has the same meaning as in section 76-2214;

(19) Real estate-related financial transaction means any transaction involving:

(a) The sale, lease, purchase, investment in, or exchange of real property, including interests in real property or the financing thereof;

(b) The refinancing of real property or interests in real property; or

(c) The use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities;

(20) Real property has the same meaning as in section 76-2217;

(21) Real property appraisal activity has the same meaning as in section 76-2215;

(22) Relocation management company means a business entity in which the preponderance of its business services include relocation of employees as an agent or contracted service provider to the employer for the purposes of

determining an anticipated sales price for the residence of an employee being relocated by the employer;

(23) Uniform Standards of Professional Appraisal Practice has the same meaning as in section 76-2213.01; and

(24) Valuation assignment has the same meaning as in section 76-2219.

Source: Laws 2011, LB410, § 2.

76-3203 Registration; application; contents; form; surety bond; renewal.

(1) It is unlawful for a person to directly or indirectly engage in or attempt to engage in business as an appraisal management company or to advertise or hold itself out as engaging in or conducting business as an appraisal management company in this state without first obtaining a registration issued by the board.

(2) An application for the registration required by subsection (1) of this section shall include the following information:

(a) The name of the person seeking registration and any other name or names, if any, under which it will do business in this state;

(b) The business address of the person seeking registration;

(c) The telephone contact information of the person seeking registration;

(d) If the person seeking registration is not a corporation that is domiciled in this state, the name and contact information for the person's agent for service of process in this state;

(e) The name, address, and contact information for any person that owns ten percent or more of the person seeking registration;

(f) The name, address, and contact information for one controlling person designated as the main contact for all communication between the person seeking registration and the board;

(g) A certification that the person seeking registration has a system and process in place to verify that an appraiser selected to the appraiser panel of the person seeking registration holds a license or certification in good standing in this state pursuant to the Real Property Appraiser Act;

(h) A certification that the person seeking registration requires appraisers completing appraisal services at the person's request to comply with the Uniform Standards of Professional Appraisal Practice, including the requirements for geographic and product competence;

(i) A certification that the person seeking registration has a system in place to verify that only licensed or certified appraisers are used for federally related transactions;

(j) A certification that the person seeking registration has a system in place to require that appraisals are conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under section 129E of the federal Truth in Lending Act, as amended, including the requirements for payment of a reasonable and customary fee to appraisers when the appraisal management company is providing appraisal services for a consumer credit transaction secured by the principal dwelling of a consumer;

(k) A certification that the person seeking registration maintains a detailed record of each request for appraisal services that it receives and the appraiser that performs the residential real estate appraisal services for the appraisal management company;

(l) If the person seeking registration is a nonresident, an irrevocable consent for service of process, if required pursuant to section 76-3205; and

(m) Any other information required by the board which is reasonably necessary to implement the Nebraska Appraisal Management Company Registration Act.

(3) An applicant for registration as an appraisal management company in this state shall submit to the board an application on a form or forms prescribed by the board.

(4) An applicant for registration as an appraisal management company in this state shall furnish to the board, at the time of making application, a surety bond in the amount of twenty-five thousand dollars. The surety bond required under this subsection shall be issued by a bonding company or insurance company authorized to do business in this state, and a copy of the bond shall be filed with the board. The bond shall be in favor of the state for the benefit of any person who is damaged by any violation of the Nebraska Appraisal Management Company Registration Act. The bond shall also be in favor of any person damaged by such a violation. Any person claiming against the bond for a violation of the act may maintain an action at law against the appraisal management company and against the surety. The aggregate liability of the surety to all persons damaged by a violation of the act by an appraisal management company shall not exceed the amount of the bond. The bond shall be maintained until one year after the date that the appraisal management company ceases operation in this state.

(5) A registration issued pursuant to the Nebraska Appraisal Management Company Registration Act shall be valid for two years after the date on which it is issued. An application for the renewal of a registration shall include substantially similar information required for the initial registration as provided in subsection (2) of this section.

Source: Laws 2011, LB410, § 3.

Cross References

Real Property Appraiser Act, see section 76-2201.

76-3204 Act; exemptions.

The Nebraska Appraisal Management Company Registration Act does not apply to:

(1) A person that exclusively employs persons for the performance of appraisal services. The employer is responsible for ensuring that the appraisal services are performed by employees in accordance with the Uniform Standards of Professional Appraisal Practice;

(2) An appraisal management company that is owned and controlled by a financial institution regulated by a federal financial institution regulatory agency;

(3) An appraiser that enters into an agreement, written or oral, with an appraiser for the performance of appraisal services if upon the completion of the appraisal services the appraisal report is signed by both the appraiser who

completed the appraisal services and the appraiser who requested the appraisal services; or

- (4) A relocation management company.

Source: Laws 2011, LB410, § 4.

76-3205 Company not domiciled in state; service of process.

Each person seeking registration as an appraisal management company in this state that is not domiciled in this state shall submit an irrevocable consent that service of process upon such person 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 person in an action against the applicant in a court of this state arising out of the person's activities in this state.

Source: Laws 2011, LB410, § 5.

76-3206 Board; fees.

The board shall charge and collect fees for its services under the Nebraska Appraisal Management Company Registration Act as follows: (1) An application fee of no more than three hundred fifty dollars; (2) an initial registration fee of no more than two thousand dollars; (3) a renewal registration fee of no more than one thousand five hundred dollars; and (4) a late renewal fee of twenty-five dollars for each month or portion of a month the fee is late.

Source: Laws 2011, LB410, § 6.

76-3207 Applicant for registration; fingerprint submission; criminal history record check; costs.

(1) An appraisal management company applying for registration in this state shall not:

- (a) In whole or in part, directly or indirectly, be owned by any person who has had an appraiser license or certificate in this state or in any other state refused, denied, canceled, surrendered in lieu of revocation, or revoked; and

- (b) Be more than ten percent owned by a person who is not of good moral character, which for purposes of this section shall require that such person has not been convicted of, or entered a plea of nolo contendere to, a felony relating to the appraisal practice or any crime involving fraud, misrepresentation, or moral turpitude.

(2) For purposes of subdivision (1)(b) of this section, each individual owner of more than ten percent of an appraisal management company shall, at the time an application for registration as an appraisal management company is made, submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. The board shall pay the Nebraska State Patrol the costs associated with conducting a fingerprint-based national criminal history record check through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the board.

Source: Laws 2011, LB410, § 7.

76-3208 Prohibited acts.

An appraisal management company that applies to the board for a registration to do business in this state as an appraisal management company shall not:

(1) Knowingly employ any individual to perform appraisal services who has had a license or certificate to act as an appraiser in this state or in any other state refused, denied, canceled, surrendered in lieu of revocation, or revoked;

(2) Knowingly enter into any independent contractor arrangement to perform appraisal services, whether in verbal, written, or other form, with any individual who has had a license or certificate to act as an appraiser in this state or in any other state refused, denied, canceled, surrendered in lieu of revocation, or revoked; or

(3) Knowingly prohibit an appraiser from including within the body of an appraisal report that is submitted by the appraiser to the appraisal management company or its assignee the fee that the appraiser was paid by the appraisal management company for the performance of the appraisal report.

Source: Laws 2011, LB410, § 8.

76-3209 Verification of appraiser license or certification.

Prior to assigning appraisal orders, an appraisal management company shall have a system in place to verify that an appraiser being added to the appraiser panel holds the appropriate appraiser license or certification in good standing.

Source: Laws 2011, LB410, § 9.

76-3210 Performance of Uniform Standards of Professional Appraisal Practice standard 3 appraisal review.

Any employee of or independent contractor to an appraisal management company that performs a Uniform Standards of Professional Appraisal Practice standard 3 appraisal review shall be an appraiser with the proper level of licensure in this state. Quality control examinations are exempt from this requirement as they are not considered a standard 3 review.

Source: Laws 2011, LB410, § 10.

76-3211 Verification of license or certification status.

Each appraisal management company seeking to be registered in this state shall certify to the board on a biennial basis on a form prescribed by the board that the appraisal management company has a system in place to verify that an appraiser on the appraiser panel has not had a license or certification as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state in the previous twenty-four months.

Source: Laws 2011, LB410, § 11.

76-3212 Records; retention.

Each appraisal management company seeking to be registered in this state shall certify to the board on a biennial basis that it maintains a detailed record of each appraisal service request that it receives and of the appraiser who performs the appraisal services for the appraisal management company. Record retention requirements are for a period of five years after appraisal services

are completed or two years after final disposition of a judicial proceeding related to the real property appraisal activity, whichever period expires later.

Source: Laws 2011, LB410, § 12.

76-3213 Completed appraisal report; limit on change.

An appraisal management company may not alter, modify, or otherwise change a completed appraisal report submitted by an appraiser without the appraiser's written consent.

Source: Laws 2011, LB410, § 13.

76-3214 Board; issue registration number; maintain list; disclosure on engagement documents.

(1) The board shall issue a unique registration number to each appraisal management company that is registered in this state.

(2) The board shall maintain a published list of the appraisal management companies that have registered with the board pursuant to the Nebraska Appraisal Management Company Registration Act and have been issued a registration number pursuant to subsection (1) of this section.

(3) An appraisal management company registered in this state shall disclose the registration number provided to it by the board on the engagement documents presented to the appraiser.

Source: Laws 2011, LB410, § 14.

76-3215 Payment of fees; appraiser added to appraiser panel; removal; complaint; hearing; board; duties.

(1) Each appraisal management company registered in this state, except in cases of noncompliance with the conditions of the engagement, shall make payment of fees to an appraiser for the completion of an appraisal or valuation assignment within sixty days after the date on which the appraiser transmits or otherwise provides the completed appraisal report or valuation assignment to the appraisal management company or its assignee.

(2) Except within the first ninety days after an appraiser is first added to the appraiser panel of an appraisal management company, an appraisal management company may not remove the appraiser from the appraiser panel of the appraisal management company or otherwise refuse to assign requests for appraisal services to an appraiser on the appraiser panel without:

(a) Notifying the appraiser in writing of the reasons why the appraiser is being removed from the appraiser panel of the appraisal management company; and

(b) Providing an opportunity for the appraiser to respond to the notification from the appraisal management company.

(3) An appraiser who is removed from the appraiser panel of an appraisal management company may file a complaint with the board for a review of the decision of the appraisal management company. The scope of the board's review in any such case is limited to determining that the appraisal management company has complied with subsection (2) of this section and whether a violation of the Real Property Appraiser Act has occurred.

(4) If an appraiser files a complaint against an appraisal management company pursuant to subsection (3) of this section, the board shall adjudicate the complaint within one hundred eighty days after the filing of the complaint.

(5) If, after opportunity for hearing and review, the board determines that an appraisal management company acted improperly in removing the appraiser from the appraiser panel, the board shall:

(a) Provide written findings to the involved parties;

(b) Provide an opportunity for the appraisal management company and the appraiser to respond to the findings; and

(c) Make recommendations for action.

Source: Laws 2011, LB410, § 15.

Cross References

Real Property Appraiser Act, see section 76-2201.

76-3216 Board; violations; enforcement actions; fine; considerations.

(1) To the extent permitted by any applicable federal legislation or regulation, the board may censure an appraisal management company, conditionally or unconditionally suspend or revoke the registration issued to the appraisal management company under the Nebraska Appraisal Management Company Registration Act, or levy fines or impose civil penalties not to exceed five thousand dollars for a first offense and not to exceed ten thousand dollars for a second or subsequent offense, if the board determines that an appraisal management company is attempting to perform, has performed, or has attempted to perform any of the following:

(a) A material violation of the act;

(b) A violation of any rule or regulation adopted and promulgated by the board; or

(c) Procurement of a registration for itself or any other person by fraud, misrepresentation, or deceit.

(2) In order to promote voluntary compliance, encourage appraisal management companies to correct errors promptly, and ensure a fair and consistent approach to enforcement, the board shall endeavor to impose fines or civil penalties that are reasonable in light of the nature, extent, and severity of the violation. The board shall also take action against an appraisal management company's registration only after less severe sanctions have proven insufficient to ensure behavior consistent with the Nebraska Appraisal Management Company Registration Act. When deciding whether to impose a sanction permitted by subsection (1) of this section, determining the sanction that is most appropriate in a specific instance, or making any other discretionary decision regarding the enforcement of the act, the board shall consider whether an appraisal management company:

(a) Has an effective program reasonably designed to ensure compliance with the act;

(b) Has taken prompt and appropriate steps to correct and prevent the recurrence of any detected violations; and

(c) Has independently reported to the board any significant violations or potential violations of the act prior to an imminent threat of disclosure or

investigation and within a reasonably prompt time after becoming aware of the occurrence of such violations.

Source: Laws 2011, LB410, § 16.

76-3217 Violations; disciplinary hearings; notice; procedure.

(1) The board shall conduct disciplinary hearings for any violation of the Nebraska Appraisal Management Company Registration Act in accordance with the Administrative Procedure Act.

(2) Before the board may censure, suspend, or revoke the registration of, or levy a fine or civil penalty against, a registered appraisal management company, the board shall notify the company in writing of any charges made under the Nebraska Appraisal Management Company Registration Act at least twenty days prior to the date set for the hearing and shall permit the appraisal management company an opportunity to be heard in person or by counsel. The notice shall be satisfied by personal service on the controlling person of the company or agent for service of process in this state or by sending the notice by certified mail, return receipt requested, to the address of the controlling person of the company that is on file with the board.

(3) Any hearing pursuant to this section shall be heard by a hearing officer at a time and place prescribed by the board. The hearing officer may make findings of fact and shall deliver such findings to the board. The board shall take such disciplinary action as it deems appropriate, subject to the limitations contained within section 76-3216.

Source: Laws 2011, LB410, § 17.

Cross References

Administrative Procedure Act, see section 84-920.

76-3218 Rules and regulations.

The board may adopt and promulgate rules and regulations not inconsistent with the Nebraska Appraisal Management Company Registration Act which may be reasonably necessary to implement, administer, and enforce the provisions of the act.

Source: Laws 2011, LB410, § 18.

76-3219 Appraisal Management Company Fund; created; use; investment.

The board shall collect all fees and other revenue pursuant to the Nebraska Appraisal Management Company Registration Act and shall remit such fees and revenue to the State Treasurer for credit to the Appraisal Management Company Fund, which is hereby created. The fund shall be used to implement, administer, and enforce 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 2011, LB410, § 19.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

76-3220 Material noncompliance; referral to board.

An appraisal management company that has a reasonable basis to believe that an appraiser has failed to comply with applicable laws or the Uniform Standards of Professional Appraisal Practice shall refer the matter to the board if the failure to comply is material.

Source: Laws 2011, LB410, § 20.

ARTICLE 33

OIL PIPELINE RECLAMATION ACT

Section

- 76-3301. Act, how cited.
- 76-3302. Terms, defined.
- 76-3303. Purpose of act; legislative intent.
- 76-3304. Pipeline carrier; responsible for reclamation costs; commencement of reclamation; period of obligation.
- 76-3305. Additional reclamation costs.
- 76-3306. Act; minimum standards; effect of negotiated agreement with landowner; duties under federal law or permits.
- 76-3307. Pipeline carrier; reclamation actions required within thirty days; exception.
- 76-3308. Pipeline carrier; compliance with federal and state laws; plant, seed, and mulch use.

76-3301 Act, how cited.

Sections 76-3301 to 76-3308 shall be known and may be cited as the Oil Pipeline Reclamation Act.

Source: Laws 2011, LB629, § 1; Laws 2012, LB845, § 1.

76-3302 Terms, defined.

For purposes of the Oil Pipeline Reclamation Act:

- (1) Oil means petroleum of any kind or in any form, including crude oil or any fraction of crude oil;
- (2) Pipeline carrier means a person that engages in owning, operating, or managing a pipeline or part of a pipeline for the transportation of oil but does not include an entity under the jurisdiction of the Nebraska Oil and Gas Conservation Commission for in-field flow-lines and gathering lines;
- (3) Reclamation means restoration of the areas through which a pipeline is constructed as close as reasonably practicable to the condition, contour, and vegetation that existed prior to construction; and
- (4) Reclamation costs include, but are not limited to, the costs of restoration of real and personal property, the costs of restoration of natural resources, the costs of rehabilitation of habitat or wildlife, and the costs of revegetation.

Source: Laws 2011, LB629, § 2.

76-3303 Purpose of act; legislative intent.

(1) The purpose of the Oil Pipeline Reclamation Act is to ensure that a pipeline carrier which owns, constructs, operates, or manages a pipeline through this state for the transportation of oil is financially responsible for reclamation costs relating to the construction, operation, and management of the pipeline in this state as prescribed in the act.

(2) It is the intent of the Legislature that proper reclamation is accomplished as part of the oil pipeline construction process, including restoration of areas

through which a pipeline is constructed as close as reasonably practicable to the condition, contour, and vegetation that existed prior to construction, including stabilizing disturbed areas, establishing a diverse plant environment of native grasses and forbs to create a safe and stable landscape, restoring active cropland to its previous productive capability, mitigating noxious weeds, and managing invasive plants, unless otherwise agreed to by the landowner.

Source: Laws 2011, LB629, § 3; Laws 2012, LB845, § 2.

76-3304 Pipeline carrier; responsible for reclamation costs; commencement of reclamation; period of obligation.

(1) A pipeline carrier owning, operating, or managing a pipeline or part of a pipeline for the transportation of oil in this state shall be responsible for all reclamation costs necessary as a result of constructing the pipeline as well as reclamation costs resulting from operating the pipeline, except to the extent another party is determined to be responsible.

(2) The pipeline carrier shall commence reclamation of the area through which a pipeline is constructed as soon as reasonably practicable after backfill as provided in sections 76-3307 and 76-3308.

(3) A pipeline carrier's obligation for reclamation and maintenance of the pipeline right-of-way shall continue until the pipeline is permanently decommissioned or removed.

Source: Laws 2011, LB629, § 4; Laws 2012, LB845, § 3.

76-3305 Additional reclamation costs.

Nothing in the Oil Pipeline Reclamation Act prohibits a state agency, county board, city council, or village board from pursuing reclamation costs for the maintenance and repair of roads, bridges, or other infrastructure related to the construction, maintenance, or operation of a pipeline by a pipeline carrier who is subject to the act.

Source: Laws 2011, LB629, § 5.

76-3306 Act; minimum standards; effect of negotiated agreement with landowner; duties under federal law or permits.

The Oil Pipeline Reclamation Act provides the minimum standards to be met by a pipeline carrier. The act is not meant to affect the obligations of a pipeline carrier provided for in a negotiated agreement with a landowner and is not to affect the duties of a pipeline carrier under applicable federal law or permits.

Source: Laws 2011, LB629, § 6.

76-3307 Pipeline carrier; reclamation actions required within thirty days; exception.

A pipeline carrier shall complete final grading, topsoil replacement, installation of erosion control structures, seeding, and mulching within thirty days after backfill except when weather conditions, extenuating circumstances, or unforeseen developments do not permit the work to be done within such thirty-day period.

Source: Laws 2012, LB845, § 4.

76-3308 Pipeline carrier; compliance with federal and state laws; plant, seed, and mulch use.

(1) A pipeline carrier shall ensure that all reclamation, including, but not limited to, choice of seed mixes, method of reseeding, and weed and erosion control measures and monitoring, is conducted in accordance with the Federal Seed Act, 7 U.S.C. 1551 et seq., the Nebraska Seed Law, and the Noxious Weed Control Act.

(2) A pipeline carrier shall ensure that genetically appropriate and locally adapted native plant materials and seeds are used based on site characteristics and surrounding vegetation as determined by a preconstruction site inventory.

(3) A pipeline carrier shall ensure that mulch is installed as required by site contours, seeding methods, or weather conditions or when requested by a landowner.

Source: Laws 2012, LB845, § 5.

Cross References

Nebraska Seed Law, see section 81-2,147.

Noxious Weed Control Act, see section 2-945.01.

ARTICLE 34**NEBRASKA UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT**

Section

- 76-3401. Act, how cited.
- 76-3402. Definitions.
- 76-3403. Applicability.
- 76-3404. Nonexclusivity.
- 76-3405. Transfer on death deed authorized.
- 76-3406. Transfer on death deed revocable.
- 76-3407. Transfer on death deed nontestamentary.
- 76-3408. Capacity of transferor.
- 76-3409. Signature; witnesses; form.
- 76-3410. Transfer on death deed; essential elements and formalities; warning; limitation on action to set aside transfer.
- 76-3411. Notice, delivery, acceptance, consideration not required.
- 76-3412. Statement; filing.
- 76-3413. Revocation by instrument authorized; revocation by act not permitted.
- 76-3414. Effect of transfer on death deed during transferor's life.
- 76-3415. Effect of transfer on death deed at transferor's death.
- 76-3416. Disclaimer.
- 76-3417. Liability for creditor claims and statutory allowances.
- 76-3418. Beneficiary; liability for medicaid reimbursement; liability for creditor claims and statutory allowances; limit.
- 76-3419. Certain contracts; requirements.
- 76-3420. Transfer on death deed property; acquisition by purchaser or lender; protections; lien for inheritance tax.
- 76-3421. Medicaid assistance; Department of Health and Human Services; powers.
- 76-3422. Uniformity of application and construction.
- 76-3423. Relation to federal Electronic Signatures in Global and National Commerce Act.

76-3401 Act, how cited.

Sections 76-3401 to 76-3423 shall be known and may be cited as the Nebraska Uniform Real Property Transfer on Death Act.

Source: Laws 2012, LB536, § 1.

76-3402 Definitions.

For purposes of the Nebraska Uniform Real Property Transfer on Death Act:

(1) Beneficiary means a person that receives property under a transfer on death deed;

(2) Designated beneficiary means a person designated to receive property in a transfer on death deed;

(3) Disinterested witness to a transfer on death deed means any individual who acts as a witness to a transfer on death deed at the date of its execution and who is not a designated beneficiary or an heir, a child, or a spouse of a designated beneficiary;

(4) Joint owner means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant. The term does not include a tenant in common without a right of survivorship;

(5) Person means an individual, a corporation, an estate, a trustee of a trust, a partnership, a limited liability company, an association, a joint venture, a public corporation, a government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(6) Property means an interest in real property located in this state which is transferable on the death of the owner;

(7) Transfer on death deed means a deed authorized under the Nebraska Uniform Real Property Transfer on Death Act; and

(8) Transferor means an individual who makes a transfer on death deed.

Source: Laws 2012, LB536, § 2; Laws 2013, LB345, § 2.

76-3403 Applicability.

The Nebraska Uniform Real Property Transfer on Death Act applies to a transfer on death deed made before, on, or after January 1, 2013, by a transferor dying on or after January 1, 2013. A transfer on death deed is subject to the common-law principles of equity except to the extent modified by the Nebraska Uniform Real Property Transfer on Death Act.

Source: Laws 2012, LB536, § 3.

76-3404 Nonexclusivity.

The Nebraska Uniform Real Property Transfer on Death Act does not affect any method of transferring property otherwise permitted under the law of this state.

Source: Laws 2012, LB536, § 4.

76-3405 Transfer on death deed authorized.

An individual may transfer property to one or more beneficiaries effective at the transferor's death by a transfer on death deed. If the property is agricultural land, the transferor may designate in the transfer on death deed the disposition of the transferor's interest in growing crops to the transferor's estate or to one or more of the designated beneficiaries. If the property is agricultural land and the transfer on death deed does not contain a designation of the disposition of

the transferor’s interest in growing crops, the transferor’s interest in the growing crops shall pass to the transferor’s estate.

Source: Laws 2012, LB536, § 5.

76-3406 Transfer on death deed revocable.

A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

Source: Laws 2012, LB536, § 6.

76-3407 Transfer on death deed nontestamentary.

A transfer on death deed is nontestamentary.

Source: Laws 2012, LB536, § 7.

76-3408 Capacity of transferor.

The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

Source: Laws 2012, LB536, § 8.

76-3409 Signature; witnesses; form.

A transfer on death deed shall be signed by the transferor or by some person in his or her presence and by his or her direction and shall be attested in writing by two or more disinterested witnesses, whose signatures along with the transferor’s signature shall be made before an officer authorized to administer oaths under the laws of this state or under the laws of the state where execution occurs and evidenced by the officer’s certificate, under official seal, in form and content substantially as follows:

I, the transferor, sign my name to this instrument this day of 20, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this transfer on death deed to transfer my interest in the described real property and that I sign it willingly or willingly direct another to sign for me, that I execute it as my free and voluntary act for the purposes therein expressed, that I am eighteen years of age or older or am not at this time a minor, and that I am of sound mind and under no constraint or undue influence.

Transferor

We, and, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the transferor signs and executes this transfer on death deed to transfer his or her interest in the described real property and that he or she signs it willingly or willingly directs another to sign for him or her, and that he or she executes it as his or her free and voluntary act for the purposes therein expressed, and that each of us, in the presence and hearing of the transferor, hereby signs this deed as witness to the transferor’s signing, and that to the best of his or her knowledge the transferor is eighteen years of age or older or is not at this time a minor and the transferor is of sound mind and under no constraint or undue influence.

Witness

Witness

THE STATE OF

COUNTY OF

Subscribed, sworn to, and acknowledged before me by, the transferor, and subscribed and sworn to before me by and, witnesses, this day of 20.....

(SEAL)(Signed)

(Official capacity of officer)

Source: Laws 2012, LB536, § 9.

76-3410 Transfer on death deed; essential elements and formalities; warning; limitation on action to set aside transfer.

(a) A transfer on death deed:

(1) Except as otherwise provided in subdivision (2) of this subsection, must contain the essential elements and formalities of a properly recordable inter vivos deed;

(2) Must state that the transfer to the designated beneficiary is to occur at the transferor’s death;

(3) Must contain the warnings provided in subsection (b) of this section; and

(4) Must be recorded (i) within thirty days after being executed as required in section 76-3409, (ii) before the transferor’s death, and (iii) in the public records in the office of the register of deeds of the county where the property is located.

(b)(1) A transfer on death deed shall contain the following warnings:

WARNING: The property transferred remains subject to inheritance taxation in Nebraska to the same extent as if owned by the transferor at death. Failure to timely pay inheritance taxes is subject to interest and penalties as provided by law.

WARNING: The designated beneficiary is personally liable, to the extent of the value of the property transferred, to account for medicaid reimbursement to the extent necessary to discharge any such claim remaining after application of the assets of the transferor’s estate. The designated beneficiary may also be personally liable, to the extent of the value of the property transferred, for claims against the estate, statutory allowances to the transferor’s surviving spouse and children, and the expenses of administration to the extent needed to pay such amounts by the personal representative.

WARNING: The Department of Health and Human Services may require revocation of this deed by a transferor, a transferor’s spouse, or both a transferor and the transferor’s spouse in order to qualify or remain qualified for medicaid assistance.

(2) No recorded transfer on death deed shall be invalidated because of any defects in the wording of the warnings required by this subsection.

(c) No action may be commenced to set aside a transfer on death deed, based on failure to comply with the requirement of disinterested witnesses pursuant to section 76-3409, more than ninety days after the date of death of the transferor or, if there is more than one transferor, more than ninety days after the date of death of the last surviving transferor.

(d) Notwithstanding subsection (c) of this section, an action to set aside a transfer on death deed, based on failure to comply with the requirement of disinterested witnesses pursuant to section 76-3409, in which the transferor or, if there is more than one transferor, the last surviving transferor, has died prior to May 8, 2013, shall be commenced by the later of (1) ninety days after the date of death of the transferor or, if there is more than one transferor, ninety days after the date of death of the last surviving transferor, or (2) ninety days after May 8, 2013.

Source: Laws 2012, LB536, § 10; Laws 2013, LB345, § 3.

76-3411 Notice, delivery, acceptance, consideration not required.

A transfer on death deed is effective without:

- (1) Notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or
- (2) Consideration.

Source: Laws 2012, LB536, § 11.

76-3412 Statement; filing.

A completed statement as provided in subdivision (2)(a) of section 76-214 must be filed at the time that the conveyance of real estate transferred by a transfer on death deed becomes effective due to the death of the transferor or the death of a surviving joint tenant of the transferor.

Source: Laws 2012, LB536, § 12.

76-3413 Revocation by instrument authorized; revocation by act not permitted.

(a) Subject to subsection (b) of this section, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(1) Is one of the following:

(A) A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(B) An instrument of revocation that expressly revokes the deed or part of the deed and that is executed with the same formalities as required in section 76-3409; or

(C) An inter vivos deed that expressly or by inconsistency revokes the transfer on death deed or part of the deed; and

(2) Is acknowledged by the transferor after the acknowledgment of the deed being revoked and is recorded (i) within thirty days after being executed, (ii) before the transferor's death, and (iii) in the public records in the office of the register of deeds of the county where the deed is recorded.

(b) If a transfer on death deed is made by more than one transferor:

(1) Revocation by a transferor does not affect the deed as to the interest of another transferor; and

(2) A deed of joint owners is revoked only if it is revoked by all of the living joint owners who were transferors.

(c) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

(d) This section does not limit the effect of an inter vivos transfer of the property.

Source: Laws 2012, LB536, § 13.

76-3414 Effect of transfer on death deed during transferor's life.

During a transferor's life, a transfer on death deed does not:

(1) Affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

(2) Affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

(3) Affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

(4) Affect the transferor's or designated beneficiary's eligibility for any form of public assistance except to the extent provided in section 76-3421;

(5) Create a legal or equitable interest in favor of the designated beneficiary;
or

(6) Subject the property to claims or process of a creditor of the designated beneficiary.

Source: Laws 2012, LB536, § 14.

76-3415 Effect of transfer on death deed at transferor's death.

(a) Except as otherwise provided in the transfer on death deed, in this section, or in sections 30-2313 to 30-2319 or section 30-2354, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(1) Subject to subdivision (2) of this subsection, the interest in the property is transferred to the designated beneficiary in accordance with the deed;

(2) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor by one hundred twenty hours. If the deed provides for a different survival period, the deed shall determine the survival requirement for designated beneficiaries. The interest of a designated beneficiary that fails to survive the transferor by one hundred twenty hours or as otherwise provided in the deed shall be treated as if the designated beneficiary predeceased the transferor;

(3) Subject to subdivision (4) of this subsection, concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship; and

(4) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one which fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

(b) A beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death.

(c) If a transferor is a joint owner and is:

(1) Survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or

(2) The last surviving joint owner, the transfer on death deed of the last surviving joint owner transferor is effective.

(d) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

(e) If after recording a transfer on death deed the transferor is divorced or his or her marriage is dissolved or annulled, the divorce, dissolution, or annulment revokes any disposition or appointment of property made by the transfer on death deed to the former spouse unless the transfer on death deed expressly provides otherwise. Property prevented from passing to a former spouse under a transfer on death deed because of revocation by divorce, dissolution, or annulment passes as if the former spouse failed to survive the transferor. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

Source: Laws 2012, LB536, § 15.

76-3416 Disclaimer.

A beneficiary may disclaim all or part of the beneficiary's interest as provided by section 30-2352.

Source: Laws 2012, LB536, § 16.

76-3417 Liability for creditor claims and statutory allowances.

(a) If other assets of the estate of the transferor are insufficient to pay all claims against the transferor's estate, statutory allowances to the transferor's surviving spouse and children, and the expenses of administration, a transfer under the Nebraska Uniform Real Property Transfer on Death Act subjects the beneficiary to personal liability as provided in this section to the extent needed to pay all claims against the transferor's estate, statutory allowances to the transferor's surviving spouse and children, and the expenses of administration.

(b)(1) A beneficiary who receives property through a transfer on death deed upon the death of the transferor is liable to account to the personal representative of the transferor's estate for a proportionate share of the fair market value of the equity in the interest received to the extent necessary to discharge the claims and allowances described in subsection (a) of this section remaining unpaid after application of the transferor's estate. For purposes of this subdivision (b)(1), the fair market value shall be determined as of the date of death of the transferor. For purposes of this subdivision (b)(1), the beneficiary's proportionate share means the proportionate share of all nonprobate transfers recovered by the personal representative for the payment of the claims and allowances under the Nebraska Uniform Real Property Transfer on Death Act and sections 30-2726, 30-2743, and 30-3850.

(2) A proceeding to assert the liability for claims against the estate and statutory allowances may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the transferor. The proceeding must be commenced within one year after the death of the transferor.

(c) A beneficiary against whom a proceeding to account is brought may join as a party to the proceeding a surviving party or beneficiary of any other transfer on death deed for the same transferor or any other asset of the transferor subject to sections 30-2726, 30-2743, and 30-3850.

(d) Assets recovered by the personal representative pursuant to this section shall be administered as part of the transferor's estate.

(e) Nothing in this section shall be construed to limit the rights of creditors under other laws of this state.

Source: Laws 2012, LB536, § 17.

76-3418 Beneficiary; liability for medicaid reimbursement; liability for creditor claims and statutory allowances; limit.

A beneficiary to whom an interest is transferred by a transfer on death deed shall be personally liable to account for medicaid reimbursement pursuant to sections 68-919 and 76-3417 to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the transferor's estate. Such liability shall be limited to the value of the interest transferred to the beneficiary. The right to recover applies to medical assistance provided before, at the same time as, or after the signing of and the recording of the transfer on death deed.

Source: Laws 2012, LB536, § 18.

76-3419 Certain contracts; requirements.

A contract to make a transfer on death deed, or not to revoke a transfer on death deed, can be established only by a writing evidencing the contract signed by the transferor after January 1, 2013.

Source: Laws 2012, LB536, § 19.

76-3420 Transfer on death deed property; acquisition by purchaser or lender; protections; lien for inheritance tax.

(a) Except as otherwise provided in subsection (b) of this section and subject to a determination of the rights of any parties to an action commenced pursuant to subsection (c) or (d) of section 76-3410, if property or any interest therein transferred to a beneficiary by a transfer on death deed is acquired by a purchaser or lender for value from a beneficiary of a transfer on death deed, the purchaser or lender takes title free of any claims of the estate, personal representative, surviving spouse, creditors, and any other person claiming by or through the transferor of the transfer on death deed, including any heir or beneficiary of the estate of the transferor, and the purchaser or lender shall not incur any personal liability to the estate, personal representative, surviving spouse, creditors, or any other person claiming by or through the transferor of the transfer on death deed, including any heir or beneficiary of the estate of the transferor, whether or not the conveyance by the transfer on death deed was proper. Except as otherwise provided in subsection (b) of this section, to be protected under this section, a purchaser or lender need not inquire whether a transferor or beneficiary of the transfer on death deed acted properly in making the conveyance to the beneficiary by the transfer on death deed.

(b) A purchaser or lender for value from a beneficiary of a transfer on death deed does not take title free of any lien for inheritance tax under section 77-2003.

Source: Laws 2012, LB536, § 20; Laws 2013, LB345, § 4.

76-3421 Medicaid assistance; Department of Health and Human Services; powers.

The Department of Health and Human Services may require revocation of a transfer on death deed by a transferor, a transferor's spouse, or both a transferor and the transferor's spouse in order for the transferor to qualify or remain qualified for medicaid assistance.

Source: Laws 2012, LB536, § 21.

76-3422 Uniformity of application and construction.

In applying and construing the Nebraska Uniform Real Property Transfer on Death Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

Source: Laws 2012, LB536, § 22.

76-3423 Relation to federal Electronic Signatures in Global and National Commerce Act.

The Nebraska Uniform Real Property Transfer on Death Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Source: Laws 2012, LB536, § 23.

CHAPTER 77

REVENUE AND TAXATION

Article.

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32. Land Reutilization Authority. 77-3206.02 to 77-3213.
33. Uniform Act on Interstate Arbitration and Compromise of Death Taxes. 77-3311.
34. Political Subdivisions, Budget Limitations.
 - (d) Limitation on Property Taxes. 77-3442, 77-3445.
 - (e) Base Limitation. 77-3446.
35. Homestead Exemption. 77-3501 to 77-3529.
38. Financial Institution Taxation. 77-3806.
39. Uniform State Tax Lien Registration and Enforcement.
 - (a) Uniform State Tax Lien Registration and Enforcement Act. 77-3903 to 77-3906.
 - (b) Tax Commissioner Powers. 77-3910.
40. Tobacco Products Tax. 77-4015 to 77-4022.
41. Employment and Investment Growth Act. 77-4110.
42. Property Tax Credit Act. 77-4212.
43. Marijuana and Controlled Substances Tax. 77-4310.03, 77-4312.

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- 45. Rental of Motor Vehicles. 77-4501.
- 46. Revenue Forecasting. 77-4601.
- 49. Quality Jobs Act. 77-4933.
- 50. Tax Equalization and Review Commission Act. 77-5001 to 77-5031.
- 52. Beginning Farmer Tax Credit Act. 77-5204 to 77-5214.
- 54. Rural Economic Opportunities Act. 77-5412.
- 55. Invest Nebraska Act. 77-5542, 77-5544.
- 56. Tax Amnesty Program. 77-5601.
- 57. Nebraska Advantage Act. 77-5701 to 77-5735.
- 58. Nebraska Advantage Research and Development Act. 77-5801 to 77-5807.
- 59. Nebraska Advantage Microenterprise Tax Credit Act. 77-5905, 77-5907.
- 62. Nameplate Capacity Tax. 77-6201 to 77-6204.
- 63. Angel Investment Tax Credit Act. 77-6301 to 77-6310.

ARTICLE 1 DEFINITIONS

Section

- 77-105. Tangible personal property, intangible personal property, defined.
- 77-123. Omitted property, defined.
- 77-132. Parcel, defined.

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, and all depreciable tangible personal property described in subsection (9) of section 77-202 used in the generation of electricity using wind as the fuel source. 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; Laws 2010, LB1048, § 10; Laws 2011, LB360, § 1.

77-123 Omitted property, defined.

Omitted property means, for the current tax year, (1) any taxable real property that was not assessed on March 19, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, any taxable real property that was not assessed on March 25, and (2) any taxable tangible personal property that was not assessed on May 1. Omitted property also means any taxable real or tangible personal property that was not assessed for any prior tax year. Omitted property does not include property exempt under subdivisions (1)(a) through (d) of section 77-202, listing errors of an item of property on the assessment roll of the county assessor, or clerical errors as defined in section 77-128.

Source: Laws 1997, LB 270, § 6; Laws 1998, LB 1104, § 5; Laws 1999, LB 194, § 6; Laws 1999, LB 271, § 3; Laws 2004, LB 973, § 5; Laws 2011, LB384, § 2.

77-132 Parcel, defined.

(1) Parcel means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section. Parcel also means an improvement on leased land.

(2) If all or several lots in the same block are owned by the same person and are contained in the same subdivision and the same tax district, they may be included in one parcel.

(3) If two or more vacant or unimproved lots in the same subdivision and the same tax district are owned by the same person and are held for sale or resale, such lots shall be included in one parcel if elected to be treated as one parcel by the owner. Such election shall be made annually by filing an application with the county assessor by December 31.

(4) For purposes of this section, subdivision means the common overall plan or approved preliminary plat.

Source: Laws 2005, LB 263, § 3; Laws 2014, LB191, § 14.
Effective date July 18, 2014.

ARTICLE 2**PROPERTY TAXABLE, EXEMPTIONS, LIENS**

Section

- 77-202. Property taxable; exemptions enumerated.
 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; delivery of copy of final decision; appeal; failure to give notice; effect.
 77-202.09. Cemetery organization; exemption; application; procedure; late filing.
 77-202.12. Public property; taxation status; county assessor; duties; appeal.

77-202 Property taxable; exemptions enumerated.

(1) The following property shall be exempt from property taxes:

(a) Property of the state and its governmental subdivisions to the extent used or being developed for use by the state or governmental subdivision for a public purpose. For purposes of this subdivision:

(i) Property of the state and its governmental subdivisions means (A) property held in fee title by the state or a governmental subdivision or (B) property beneficially owned by the state or a governmental subdivision in that it is used for a public purpose and is being acquired under a lease-purchase agreement, financing lease, or other instrument which provides for transfer of legal title to the property to the state or a governmental subdivision upon payment of all amounts due thereunder. If the property to be beneficially owned by a governmental subdivision has a total acquisition cost that exceeds the threshold amount or will be used as the site of a public building with a total estimated construction cost that exceeds the threshold amount, then such property shall qualify for an exemption under this section only if the question of acquiring such property or constructing such public building has been submitted at a primary, general, or special election held within the governmental subdivision and has been approved by the voters of the governmental subdivision. For purposes of this subdivision, threshold amount means the greater of fifty thousand dollars or six-tenths of one percent of the total actual value of real

and personal property of the governmental subdivision that will beneficially own the property as of the end of the governmental subdivision's prior fiscal year; and

(ii) Public purpose means use of the property (A) to provide public services with or without cost to the recipient, including the general operation of government, public education, public safety, transportation, public works, civil and criminal justice, public health and welfare, developments by a public housing authority, parks, culture, recreation, community development, and cemetery purposes, or (B) to carry out the duties and responsibilities conferred by law with or without consideration. Public purpose does not include leasing of property to a private party unless the lease of the property is at fair market value for a public purpose. Leases of property by a public housing authority to low-income individuals as a place of residence are for the authority's public purpose;

(b) Unleased property of the state or its governmental subdivisions which is not being used or developed for use for a public purpose but upon which a payment in lieu of taxes is paid for public safety, rescue, and emergency services and road or street construction or maintenance services to all governmental units providing such services to the property. Except as provided in Article VIII, section 11, of the Constitution of Nebraska, the payment in lieu of taxes shall be based on the proportionate share of the cost of providing public safety, rescue, or emergency services and road or street construction or maintenance services unless a general policy is adopted by the governing body of the governmental subdivision providing such services which provides for a different method of determining the amount of the payment in lieu of taxes. The governing body may adopt a general policy by ordinance or resolution for determining the amount of payment in lieu of taxes by majority vote after a hearing on the ordinance or resolution. Such ordinance or resolution shall nevertheless result in an equitable contribution for the cost of providing such services to the exempt property;

(c) Property owned by and used exclusively for agricultural and horticultural societies;

(d) Property owned by educational, religious, charitable, or cemetery organizations, or any organization for the exclusive benefit of any such educational, religious, charitable, or cemetery organization, and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. For purposes of this subdivision, educational organization means (A) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education or (B) a museum or historical society operated exclusively for the benefit and education of the public. For purposes of this subdivision, charitable organization means an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons; and

(e) Household goods and personal effects not owned or used for financial gain or profit to either the owner or user.

(2) The increased value of land by reason of shade and ornamental trees planted along the highway shall not be taken into account in the valuation of land.

(3) Tangible personal property which is not depreciable tangible personal property as defined in section 77-119 shall be exempt from property tax.

(4) Motor vehicles required to be registered for operation on the highways of this state shall be exempt from payment of property taxes.

(5) Business and agricultural inventory shall be exempt from the personal property tax. For purposes of this subsection, business inventory includes personal property owned for purposes of leasing or renting such property to others for financial gain only if the personal property is of a type which in the ordinary course of business is leased or rented thirty days or less and may be returned at the option of the lessee or renter at any time and the personal property is of a type which would be considered household goods or personal effects if owned by an individual. All other personal property owned for purposes of leasing or renting such property to others for financial gain shall not be considered business inventory.

(6) Any personal property exempt pursuant to subsection (2) of section 77-4105 or section 77-5209.02 shall be exempt from the personal property tax.

(7) Livestock shall be exempt from the personal property tax.

(8) Any personal property exempt pursuant to the Nebraska Advantage Act shall be exempt from the personal property tax.

(9) Any depreciable tangible personal property used directly in the generation of electricity using wind as the fuel source shall be exempt from the property tax levied on depreciable tangible personal property. Depreciable tangible personal property used directly in the generation of electricity using wind as the fuel source includes, but is not limited to, wind turbines, rotors and blades, towers, trackers, generating equipment, transmission components, substations, supporting structures or racks, inverters, and other system components such as wiring, control systems, switchgears, and generator step-up transformers.

(10) Any tangible personal property that is acquired by a person operating a data center located in this state, that is assembled, engineered, processed, fabricated, manufactured into, attached to, or incorporated into other tangible personal property, both in component form or that of an assembled product, for the purpose of subsequent use at a physical location outside this state by the person operating a data center shall be exempt from the personal property tax. Such exemption extends to keeping, retaining, or exercising any right or power over tangible personal property in this state for the purpose of subsequently transporting it outside this state for use thereafter outside this state. For purposes of this subsection, data center means computers, supporting equipment, and other organized assembly of hardware or software that are designed to centralize the storage, management, or dissemination of data and information, environmentally controlled structures or facilities or interrelated structures or facilities that provide the infrastructure for housing the equipment, such as raised flooring, electricity supply, communication and data lines,

Internet access, cooling, security, and fire suppression, and any building housing the foregoing.

Source: Laws 1903, c. 73, § 13, p. 390; R.S.1913, § 6301; Laws 1921, c. 133, art. II, § 2, p. 547; C.S.1922, § 5821; C.S.1929, § 77-202; R.S.1943, § 77-202; Laws 1955, c. 290, § 1, p. 921; Laws 1965, c. 468, § 1, p. 1514; Laws 1965, c. 469, § 1, p. 1516; Laws 1967, c. 494, § 1, p. 1685; Laws 1967, c. 495, § 1, p. 1686; Laws 1971, LB 945, § 2; Laws 1975, LB 530, § 3; Laws 1980, LB 882, § 1; Laws 1980, LB 913, § 1; Laws 1982, LB 383, § 5; Laws 1984, LB 891, § 1; Laws 1985, LB 268, § 1; Laws 1986, LB 732, § 1; Laws 1987, LB 775, § 13; Laws 1988, LB 855, § 3; Laws 1989, Spec. Sess., LB 7, § 2; Laws 1991, LB 829, § 7; Laws 1992, LB 1063, § 53; Laws 1992, Second Spec. Sess., LB 1, § 51; Laws 1994, LB 961, § 7; Laws 1997, LB 271, § 39; Laws 1999, LB 271, § 4; Laws 2002, LB 994, § 10; Laws 2005, LB 312, § 4; Laws 2008, LB1027, § 1; Laws 2010, LB1048, § 11; Laws 2011, LB360, § 2; Laws 2012, LB902, § 1; Laws 2012, LB1080, § 1.

Cross References

Nebraska Advantage Act, see section 77-5701.

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 July 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 July 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 114, § 1; Laws 1973, LB 530, § 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; Laws 2010, LB708, § 1.

77-202.04 Property taxable; exempt status; delivery of copy of final decision; 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, the Tax Commissioner, or the Property Tax Administrator may appeal the granting 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 or Property Tax Administrator may in his or her discretion intervene in any such appeal pursuant to this section within thirty days after notice by the Tax Equalization and Review Commission that an appeal has been filed pursuant to this section. If the county assessor, Tax Commissioner, or Property Tax Administrator appeals a county board of equalization's final decision granting an exemption from property taxation, the person, corporation, or organization granted such exemption by the county board of equalization shall be made a party to the appeal and shall be issued a notice of the appeal by the Tax Equalization and Review Commission within thirty days after the appeal is filed.

(2) A copy of the final decision by a county board of equalization shall be delivered electronically to the Tax Commissioner and the Property Tax Administrator within seven days after the date of the board's decision. The Tax Commissioner or the Property Tax Administrator shall have thirty days after the final decision to appeal the decision.

(3) 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; Laws 2010, LB877, § 1; Laws 2011, LB384, § 3.

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 Decem-

ber 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 July 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; Laws 2010, LB708, § 2.

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 within thirty days after notice by the Tax Equalization and Review Commission that an appeal has been filed pursuant to this section.

Source: Laws 1999, LB 271, § 9; Laws 2000, LB 968, § 32; Laws 2005, LB 263, § 5; Laws 2007, LB334, § 21; Laws 2011, LB384, § 4.

ARTICLE 3

DEPARTMENT OF REVENUE

Section

- 77-362.02. Department of Motor Vehicles; provide information to Department of Revenue.
- 77-367. Products and services to identify nonfilers of returns, underreporters, nonpayers of taxes, or improper or fraudulent payments; contract authorized; duties; use of proceeds; report.
- 77-377.01. Delinquent tax collection; contract with collection agency; when authorized.
- 77-378. Delinquent taxpayers; Department of Revenue and Department of Labor; prepare, maintain, and publish list; Tax Commissioner and Commissioner of Labor; duties.

Section

- 77-382. Department; tax expenditure report; prepare; contents.
 77-383. Tax expenditure reports; department; access to information.
 77-385. Tax expenditure report; summary; submission required; joint hearing; supplemental information.
 77-3,110. Department of Revenue Miscellaneous Receipts Fund; created; use; investment.
 77-3,111. Repealed. Laws 2011, LB 378, § 37.
 77-3,116. Study; cooperation with Department of Labor and other state agencies; contracts authorized; reports; department; duty.
 77-3,119. Tax Commissioner; certify population of cities and villages.

77-362.02 Department of Motor Vehicles; provide information to Department of Revenue.

In order to assist the Department of Revenue in carrying out its duties, the Department of Motor Vehicles shall provide information about individuals holding an operator's or driver's license or a state identification card under the Motor Vehicle Operator's License Act to the Department of Revenue in a manner agreed to by the Department of Revenue and the Department of Motor Vehicles. The information shall include:

- (1) The individual's name;
- (2) The individual's address of record;
- (3) The individual's social security number, if available and permissible under law, and the individual's date of birth;
- (4) The type of license, permit, or card held;
- (5) The issuance date of the license, permit, or card;
- (6) The expiration date of the license, permit, or card; and
- (7) The status of the license, permit, or card.

The Department of Revenue may enter into agreements with the Director of Motor Vehicles to carry out this section.

Source: Laws 2010, LB879, § 5.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.

77-367 Products and services to identify nonfilers of returns, underreporters, nonpayers of taxes, or improper or fraudulent payments; contract authorized; duties; use of proceeds; report.

(1) The Department of Revenue may contract to procure products and services to develop, deploy, or administer systems or programs which identify nonfilers of returns, underreporters, or nonpayers of taxes administered by the department or improper or fraudulent payments made through programs administered by the department. The department shall enter into at least one such contract by December 31, 2014, and such contract shall be for the purpose of identifying nonfilers of returns with a tax liability in any amount or underreporters or nonpayers of taxes with an outstanding tax liability of at least five thousand dollars. Fees for services, reimbursements, costs incurred by the department, or other remuneration may be funded from the amount of tax, penalty, interest, or other recovery actually collected and shall be paid only after the amount is collected. The Legislature intends to appropriate an amount from the tax, penalty, interest, and other recovery actually collected, not to

exceed the amount collected, which is sufficient to pay for services, reimbursements, costs incurred by the department, or other remuneration pursuant to this section. Vendors entering into a contract with the department pursuant to this section are subject to the requirements and penalties of the confidentiality laws of this state regarding tax information.

(2) Ten percent of all proceeds received during each calendar year due to the contracts entered into pursuant to this section shall be deposited in the Department of Revenue Enforcement Fund for purposes of identifying nonfilers, underreporters, nonpayers, and improper or fraudulent payments.

(3) The Tax Commissioner shall submit electronically an annual report to the Revenue Committee of the Legislature and Appropriations Committee of the Legislature on the amount of dollars generated during the previous fiscal year pursuant to this section.

Source: Laws 2011, LB642, § 1; Laws 2012, LB782, § 135; Laws 2014, LB851, § 7.

Operative date July 18, 2014.

77-377.01 Delinquent tax collection; contract with collection agency; when authorized.

The Tax Commissioner may, for the purposes of collecting delinquent taxes due from a taxpayer and in addition to exercising those powers in section 77-27,107, contract with any collection agency licensed pursuant to the Collection Agency Act, within or without the state, for the collection of such delinquent taxes, including penalties and interest thereon. Such delinquent tax claims may be assigned to the collection agency, for the purpose of litigation in the agency's name and at the agency's expense, as a means of facilitating and expediting the collection process.

For purposes of this section, a delinquent tax claim shall be defined as a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been mailed at least three notices requesting payment. At least one notice shall include a statement that the matter of such taxpayer's delinquency may be referred to a collection agency in the taxpayer's home state.

Source: Laws 1981, LB 170, § 1; Laws 1993, LB 261, § 22; Laws 1993, LB 161, § 2; Laws 2012, LB727, § 28.

Cross References

Collection Agency Act, see section 45-601.

77-378 Delinquent taxpayers; Department of Revenue and Department of Labor; prepare, maintain, and publish list; Tax Commissioner and Commissioner of Labor; duties.

(1) The Department of Revenue and the Department of Labor shall prepare, maintain, and publish a list of delinquent taxpayers who owe taxes or fees, including interest, penalties, and costs, in excess of twenty thousand dollars for which a notice of lien has been filed with the appropriate filing officer in accordance with the Uniform State Tax Lien Registration and Enforcement Act, except that no such list of delinquent taxpayers shall include any taxpayer that has not exhausted or waived all rights of appeal from a final balance of tax liability. The list may be posted on the web site of the Department of Revenue

or the Department of Labor. The list shall include the name and address of the delinquent taxpayer, the type of tax or fee due, and the amount of tax or fee due, including interest, penalties, and costs.

(2) The Tax Commissioner and Commissioner of Labor shall update the list of delinquent taxpayers on a quarterly basis. The list shall not include (a) the name or related information of any taxpayer who has entered into a payment agreement with the Tax Commissioner or Commissioner of Labor and who is in compliance with that agreement or (b) the name or related information of any person who is protected by a stay that is in effect under the federal bankruptcy law. The name of a taxpayer shall be removed from the list within fifteen days after the payment in full of the debt or within fifteen days after the taxpayer enters into a payment agreement with the Tax Commissioner or Commissioner of Labor. A taxpayer may be placed back on the list if the taxpayer is more than fifteen days delinquent on a payment agreement.

(3) At least thirty days before the disclosure of the name of a delinquent taxpayer pursuant to subsection (1) of this section, the Tax Commissioner or Commissioner of Labor shall mail a written notice to the delinquent taxpayer at the taxpayer's last-known address informing the taxpayer that the failure to cure the tax delinquency could result in the taxpayer's name being included in a list of delinquent taxpayers that is published by the Tax Commissioner or Commissioner of Labor pursuant to this section.

Source: Laws 2010, LB879, § 6.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-382 Department; tax expenditure report; prepare; contents.

(1) The department shall prepare a tax expenditure report describing (a) the basic provisions of the Nebraska tax laws, (b) the actual or estimated revenue loss caused by the exemptions, deductions, exclusions, deferrals, credits, and preferential rates in effect on July 1 of each year and allowed under Nebraska's tax structure and in the property tax, (c) the actual or estimated revenue loss caused by failure to impose sales and use tax on services purchased for nonbusiness use, and (d) the elements which make up the tax base for state and local income, including income, sales and use, property, and miscellaneous taxes.

(2) The department shall review the major tax exemptions for which state general funds are used to reduce the impact of revenue lost due to a tax expenditure. The report shall indicate an estimate of the amount of the reduction in revenue resulting from the operation of all tax expenditures. The report shall list each tax expenditure relating to sales and use tax under the following categories:

(a) Agriculture, which shall include a separate listing for the following items: Agricultural machinery; agricultural chemicals; seeds sold to commercial producers; water for irrigation and manufacturing; commercial artificial insemination; mineral oil as dust suppressant; animal grooming; oxygen for use in aquaculture; animal life whose products constitute food for human consumption; and grains;

(b) Business across state lines, which shall include a separate listing for the following items: Property shipped out-of-state; fabrication labor for items to be

shipped out-of-state; property to be transported out-of-state; property purchased in other states to be used in Nebraska; aircraft delivery to an out-of-state resident or business; state reciprocal agreements for industrial machinery; and property taxed in another state;

(c) Common carrier and logistics, which shall include a separate listing for the following items: Railroad rolling stock and repair parts and services; common or contract carriers and repair parts and services; common or contract carrier accessories; and common or contract carrier safety equipment;

(d) Consumer goods, which shall include a separate listing for the following items: Motor vehicles and motorboat trade-ins; merchandise trade-ins; certain medical equipment and medicine; newspapers; laundromats; telefloral deliveries; motor vehicle discounts for the disabled; and political campaign fundraisers;

(e) Energy, which shall include a separate listing for the following items: Motor fuels; energy used in industry; energy used in agriculture; aviation fuel; and minerals, oil, and gas severed from real property;

(f) Food, which shall include a separate listing for the following items: Food for home consumption; Supplemental Nutrition Assistance Program; school lunches; meals sold by hospitals; meals sold by institutions at a flat rate; food for the elderly, handicapped, and Supplemental Security Income recipients; and meals sold by churches;

(g) General business, which shall include a separate listing for the following items: Component and ingredient parts; manufacturing machinery; containers; film rentals; molds and dies; syndicated programming; intercompany sales; intercompany leases; sale of a business or farm machinery; and transfer of property in a change of business ownership;

(h) Lodging and shelter, which shall include a separate listing for the following item: Room rentals by certain institutions;

(i) Miscellaneous, which shall include a separate listing for the following items: Cash discounts and coupons; separately stated finance charges; casual sales; lease-to-purchase agreements; and separately stated taxes;

(j) Nonprofits, governments, and exempt entities, which shall include a separate listing for the following items: Purchases by political subdivisions of the state; purchases by churches and nonprofit colleges and medical facilities; purchasing agents for public real estate construction improvements; contractor as purchasing agent for public agencies; Nebraska lottery; admissions to school events; sales on Native American Indian reservations; school-supporting fundraisers; fine art purchases by a museum; purchases by the Nebraska State Fair Board; purchases by the Nebraska Investment Finance Authority and licensees of the State Racing Commission; purchases by the United States Government; public records; and sales by religious organizations;

(k) Recent sales tax expenditures, which shall include a separate listing for each sales tax expenditure created by statute or rule and regulation after July 19, 2012;

(l) Services purchased for nonbusiness use, which shall include a separate listing for each such service, including, but not limited to, the following items: Motor vehicle cleaning, maintenance, and repair services; cleaning and repair of clothing; cleaning, maintenance, and repair of other tangible personal property; maintenance, painting, and repair of real property; entertainment

admissions; personal care services; lawn care, gardening, and landscaping services; pet-related services; storage and moving services; household utilities; other personal services; taxi, limousine, and other transportation services; legal services; accounting services; other professional services; and other real estate services; and

(m) Telecommunications, which shall include a separate listing for the following items: Telecommunications access charges; prepaid calling arrangements; conference bridging services; and nonvoice data services.

(3) It is the intent of the Legislature that nothing in the Tax Expenditure Reporting Act shall cause the valuation or assessment of any property exempt from taxation on the basis of its use exclusively for religious, educational, or charitable purposes.

Source: Laws 1979, LB 17, § 4; R.S.Supp., 1979, § 77-356; Laws 1980, LB 834, § 23; Laws 1991, LB 82, § 2; Laws 2012, LB962, § 1; Laws 2013, LB629, § 1; Laws 2014, LB989, § 1.
Effective date July 18, 2014.

77-383 Tax expenditure reports; department; access to information.

The department may request from any state or local official or agency any information necessary to complete the reports required under section 77-382 and subsection (2) of section 77-385. All state and local officials or agencies shall cooperate with the department with respect to any such request.

Source: Laws 1979, LB 17, § 5; R.S.Supp., 1979, § 77-357; Laws 1980, LB 834, § 24; Laws 2014, LB989, § 2.
Effective date July 18, 2014.

77-385 Tax expenditure report; summary; submission required; joint hearing; supplemental information.

(1) The report required under section 77-382 and a summary of the report shall be submitted to the Governor, the Executive Board of the Legislative Council, and the chairpersons of the Legislature's Revenue and Appropriations Committees on or before October 15, 1991, and October 15 of every even-numbered year thereafter. The report submitted to the executive board and the committees shall be submitted electronically. The department shall, on or before December 1 of each even-numbered year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request. The summary shall be included with or appended to the Governor's budget presented to the Legislature in odd-numbered years.

(2)(a) In addition to the tax expenditure report required under section 77-382, the department shall prepare an annual report that focuses specifically on the tax expenditures relating to sales and use tax as follows:

(i) For 2014 and every fourth year thereafter, the report shall analyze the actual or estimated revenue loss caused by the tax expenditures described in subdivisions (2)(a) through (c) of section 77-382;

(ii) For 2015 and every fourth year thereafter, the report shall analyze the actual or estimated revenue loss caused by the tax expenditures described in subdivisions (2)(d) through (f) of section 77-382;

(iii) For 2016 and every fourth year thereafter, the report shall analyze the actual or estimated revenue loss caused by the tax expenditures described in subdivisions (2)(g) through (j) of section 77-382; and

(iv) For 2017 and every fourth year thereafter, the report shall analyze the actual or estimated revenue loss caused by the tax expenditures described in subdivisions (2)(k) through (m) of section 77-382.

(b) The report required under this subsection shall be submitted to the Governor, the Executive Board of the Legislative Council, and the chairpersons of the Revenue Committee of the Legislature and the Appropriations Committee of the Legislature on or before October 15 of each year. The report submitted to the executive board and the committees shall be submitted electronically. The department shall, on or before December 1 of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

Source: Laws 1979, LB 17, § 7; R.S.Supp., 1979, § 77-359; Laws 1980, LB 834, § 26; Laws 1991, LB 82, § 3; Laws 2012, LB782, § 136; Laws 2013, LB612, § 1; Laws 2014, LB989, § 3.
Effective date July 18, 2014.

77-3,110 Department of Revenue Miscellaneous Receipts Fund; created; use; investment.

All funds received pursuant to sections 77-3,109 and 77-3,118 shall be remitted to the State Treasurer for credit to the Department of Revenue Miscellaneous Receipts Fund which is hereby created. All money in the fund shall be administered by the Department of Revenue and shall be used to defray the cost of production of the publications listed in section 77-3,109 or of the listings described in section 77-3,118, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Department of Revenue Miscellaneous Receipts 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 1986, LB 1027, § 212; Laws 1993, LB 345, § 10; Laws 1994, LB 1066, § 79; Laws 2009, First Spec. Sess., LB3, § 54.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

77-3,111 Repealed. Laws 2011, LB 378, § 37.

77-3,116 Study; cooperation with Department of Labor and other state agencies; contracts authorized; reports; department; duty.

(1) The Department of Revenue and the Department of Labor shall cooperate and participate in the collection of data for the study described in section 77-3,115. Other state agencies, including the University of Nebraska, shall assist in the study or the update as requested by the Department of Revenue and as any necessary funds are available. Any agency may contract with the Department of Revenue to provide such assistance. The Department of Revenue may also contract with an independent entity for the entity to conduct or assist in conducting such study or update. The department, other state agency, or

independent entity preparing the material or study shall utilize and consider, along with other information, the results of any available study relating to the items listed in section 77-3,115 and conducted or contracted for by the Legislature in the year prior to April 16, 1992.

(2) A preliminary report of the initial study's models and initial findings shall be reported by the Department of Revenue to the chairpersons of the Appropriations Committee and Revenue Committee of the Legislature, the Clerk of the Legislature, and the Governor by December 1, 1992. The initial study shall be completed and the department shall report its findings to the same entities by December 1, 1993. The study shall be updated and the update shall be reported to the same entities on November 1, 2013, and every two years thereafter. The study submitted to the Appropriations Committee and Revenue Committee of the Legislature and the Clerk of the Legislature pursuant to this subsection shall be submitted electronically.

(3) Any models developed for the initial study or update shall be electronically shared with the Legislative Fiscal Analyst. The Department of Revenue shall include in its budget request for every other biennium following the 1991-93 biennium sufficient appropriation authority to conduct or contract for the required update.

Source: Laws 1992, LB 719A, § 218; Laws 2012, LB727, § 29; Laws 2012, LB782, § 137; Laws 2013, LB612, § 2.

77-3,119 Tax Commissioner; certify population of cities and villages.

(1) The Tax Commissioner shall certify the population of cities and villages to be used for purposes of calculations made pursuant to subdivision (4) of section 18-2603, subdivisions (3)(a) and (b) of section 35-1205, subdivision (1) of section 39-2517, and sections 39-2513 and 77-27,139.02. The Tax Commissioner shall transmit copies of such certification to all interested parties upon request.

(2) The Tax Commissioner shall certify the population of each city and village based upon the most recent federal census. The Tax Commissioner shall determine the most recent federal census for each city and village by using the most recent federal census figures available from (a) the most recent federal decennial census, (b) the most recent federal census update or recount certified by the United States Bureau of the Census, or (c) the most recent federal census figure of the city or village plus the population of territory annexed as calculated in sections 18-1753 and 18-1754.

(3) The Tax Commissioner may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1994, LB 1127, § 1; Laws 1998, LB 1120, § 26; Laws 2000, LB 968, § 33; Laws 2011, LB383, § 2.

ARTICLE 6

ASSESSMENT AND EQUALIZATION OF RAILROAD PROPERTY

(a) RAILROAD OPERATING PROPERTY

Section

77-612. Railroad property; notice of valuation; appeal.

(a) RAILROAD OPERATING PROPERTY

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 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; Laws 2012, LB727, § 30.

ARTICLE 7**DEPARTMENT OF PROPERTY ASSESSMENT AND TAXATION**

Section

- 77-701. Property assessment division; established; Property Tax Administrator; powers and duties; appeal rights.
 77-702. Property Tax Administrator; qualifications; duties.
 77-709. Property assessment division; annual report; powers and duties.

77-701 Property assessment division; established; Property Tax Administrator; powers and duties; appeal rights.

(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) The Tax Commissioner or Property Tax Administrator may appeal any final decision of a county board of equalization relating to the granting or denying of an exemption of real or personal property to the Tax Equalization and Review Commission. If the Tax Commissioner or Property Tax Administra-

tor files such an appeal, the person, corporation, or organization granted or denied the exemption by the county board of equalization shall be made a party to the appeal and shall be issued a notice of the appeal by the Tax Equalization and Review Commission within thirty days after the appeal is filed. The Tax Commissioner or Property Tax Administrator may appeal any final decision of the Tax Equalization and Review Commission relating to the granting or denying of an exemption of real or personal property or relating to the valuation or equalization of real property.

Source: Laws 1999, LB 36, § 21; Laws 2007, LB334, § 43; Laws 2010, LB877, § 2.

Cross References

State Employees Retirement Act, see section 84-1331.

77-702 Property Tax Administrator; qualifications; duties.

(1) 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) 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; Laws 2011, LB210, § 4; Laws 2011, LB384, § 5.

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 shall submit the report electronically to the Clerk of the Legislature. 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; Laws 2013, LB222, § 30.

ARTICLE 8
PUBLIC SERVICE ENTITIES

Section

77-802. Property Tax Administrator; valuation; apportionment of tax.

77-802 Property Tax Administrator; valuation; apportionment of tax.

The Property Tax Administrator shall apportion the total taxable value including the franchise value to all taxing subdivisions in proportion to the ratio of the original cost of all operating real and tangible personal property of that public service entity having a situs in that taxing subdivision to the original cost of all operating real and tangible personal property of that public service entity having a situs in the state.

If the apportionment in accordance with this section does not fairly represent the proportion of the taxable value, including franchise value properly allocable to the county, the taxpayer may petition for or the Property Tax Administrator may require the inclusion of any other method to effectuate an equitable allocation of the value of the public service entity for purposes of taxation.

On or before July 25, the Property Tax Administrator shall mail a draft appraisal to each public service entity as defined in section 77-801.01. On or before August 10, the Property Tax Administrator shall, by mail, notify each public service entity of its taxable value and the distribution of that value to the taxing subdivisions in which the entity has situs. On or before August 10, the Property Tax Administrator shall also certify to the county assessors the taxable value so determined.

Source: Laws 1921, c. 133, art. IX, § 2, p. 587; C.S.1922, § 5891; C.S.1929, § 77-802; R.S.1943, § 77-802; Laws 1983, LB 353, § 2; Laws 1984, LB 835, § 6; Laws 1985, LB 269, § 3; Laws 1987, LB 508, § 26; Laws 1995, LB 490, § 88; Laws 1997, LB 270, § 40; Laws 1998, LB 306, § 20; Laws 2004, LB 973, § 14; Laws 2012, LB727, § 31.

ARTICLE 9
INSURANCE COMPANIES

Section

77-908. Insurance companies; tax on gross premiums; rate; exceptions.

77-912. Tax; Director of Insurance; disposition; exceptions.

77-918. Prepayment of tax; when due; Premium and Retaliatory Tax Suspense Fund; created; investment.

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 and (2) for property and casualty insurance, excluding individual sickness and accident insurance, the rate of such tax shall be one 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, the Nebraska Job Creation and Mainstreet Revitalization Act, and the New Markets Job Growth Investment 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; Laws 2010, LB698, § 3; Laws 2012, LB1128, § 21; Laws 2014, LB191, § 15.
Effective date July 18, 2014.

Cross References

Captive Insurers Act, see section 44-8201.

Community Development Assistance Act, see section 13-201.

Nebraska Job Creation and Mainstreet Revitalization Act, see section 77-2901.

New Markets Job Growth Investment Act, see section 77-1101.

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; and

(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.

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; Laws 2010, LB698, § 4.

77-918 Prepayment of tax; when due; Premium and Retaliatory Tax Suspense Fund; created; investment.

Insurers transacting insurance in this state whose annual tax for the preceding taxable year was four thousand dollars or more shall make prepayments of the annual taxes imposed pursuant to Chapter 77, article 9, and related retaliatory taxes imposed pursuant to Chapter 44, article 1.

Each insurer required to make prepayments shall remit such prepayments on or before April 15, June 15, and September 15 of the current taxable year. Remittance for such prepayments shall be accompanied by a prepayment form prescribed by the director.

The amount of each such prepayment shall be at least one-fourth of either (1) the total tax paid for the immediately preceding taxable year or (2) eighty percent of the actual tax due for the current taxable year.

The director, for good cause shown, may extend for not more than ten days the time for making a prepayment. The extension may be granted at any time if a request for such extension is filed with the director within or prior to the period for which the extension may be granted. Insurers who fail to pay any premium or retaliatory tax, including prepayments, when due shall pay interest at the rate prescribed by section 45-104.02, as such rate may from time to time be adjusted, until such tax is paid. Any insurer who fails to make the prepayments within the prescribed time period or to obtain an extension shall be subject to the penalties prescribed in section 77-911.

The director shall immediately deposit one-half of the prepayments received in the Premium and Retaliatory Tax Suspense Fund, which fund is hereby created, and one-half of the prepayments received in the General Fund. Commencing with the premium and related retaliatory taxes for the taxable year ending December 31, 2001, and for each taxable year thereafter, the director shall determine the amount of the premium and related retaliatory taxes imposed by section 44-150 or 77-908 paid by insurers writing health insurance in this state, except as otherwise set forth in subdivisions (1) and (2) of section 77-912, and such amount shall be credited to the Comprehensive Health Insurance Pool Distributive Fund. Except as provided in subsection (5) of section 44-4225, on May 1 of each year the director shall transfer all of the interest earned in the Premium and Retaliatory Tax Suspense Fund on the immediately preceding year's prepayments to the General Fund and transfer the balance of the preceding year's prepayments deposited in the Premium and Retaliatory Tax Suspense Fund to the Insurance Tax Fund. Any money in the Premium and Retaliatory Tax Suspense 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 1986, LB 1114, § 17; Laws 1992, Fourth Spec. Sess., LB 1, § 14; Laws 1994, LB 1066, § 81; Laws 2000, LB 1253, § 45; Laws 2011, LB73, § 7.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 10

NEBRASKA ADVANTAGE TRANSFORMATIONAL TOURISM AND REDEVELOPMENT ACT

Section

- 77-1001. Act, how cited.
- 77-1002. Legislative findings and declarations.
- 77-1003. Definitions, where found.
- 77-1004. Tax terms, meaning.
- 77-1005. Approved cost, defined.
- 77-1006. Approved project, defined.
- 77-1007. Cultural development, defined.
- 77-1008. Destination dining, defined.
- 77-1009. Entertainment destination center, defined.
- 77-1010. Entitlement period, defined.
- 77-1011. Full-service restaurant, defined.
- 77-1012. Historical redevelopment, defined.
- 77-1013. Investment, defined.
- 77-1014. Lodging, defined.
- 77-1015. Mixed-use project, defined.
- 77-1016. Nebraska crafts and products center, defined.
- 77-1017. Project, defined.
- 77-1018. Qualified business, defined.
- 77-1019. Qualified property, defined.
- 77-1020. Recreation facility, defined.
- 77-1021. Redevelopment project, defined.
- 77-1022. Related persons, defined.
- 77-1023. Structured parking, defined.
- 77-1024. Taxpayer, defined.
- 77-1025. Tourism attraction, defined.
- 77-1026. Year, defined.
- 77-1027. Year of application, defined.
- 77-1028. Election required; procedures applicable.
- 77-1029. Verification of work eligibility status.
- 77-1030. Application; form; contents; confidentiality; fee; municipality; duties; certification; written agreement; contents; modification.
- 77-1031. Incentives; tiers; project requirements; refund of taxes.
- 77-1032. Department of Revenue; duties; review of projects; recapture of incentives; Nebraska Advantage Transformational Tourism and Redevelopment Act Cash Fund; created; use; investment.
- 77-1033. Transfer of incentives; when; liability for recapture.
- 77-1034. Refunds; interest not allowable.
- 77-1035. Act; restrictions on use.

77-1001 Act, how cited.

Sections 77-1001 to 77-1035 shall be known and may be cited as the Nebraska Advantage Transformational Tourism and Redevelopment Act.

Source: Laws 2010, LB1018, § 1.

77-1002 Legislative findings and declarations.

The Legislature hereby finds and declares that it is the policy of this state to utilize Nebraska's tax structure in order to encourage new businesses to relocate to Nebraska as a component of a program to develop new tourism attractions as well as to redevelop areas of municipalities which are suffering the effects of age. In addition, the policy of this state is to promote the creation and retention of new jobs in Nebraska and attract and retain Nebraska's best and brightest young people.

Source: Laws 2010, LB1018, § 2.

77-1003 Definitions, where found.

For purposes of the Nebraska Advantage Transformational Tourism and Redevelopment Act, the definitions found in sections 77-1004 to 77-1027 shall be used.

Source: Laws 2010, LB1018, § 3.

77-1004 Tax terms, meaning.

Any term shall have the same meaning as used in Chapter 77, article 27.

Source: Laws 2010, LB1018, § 4.

77-1005 Approved cost, defined.

Approved cost means:

(1) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, delivery persons, and material suppliers in connection with the acquisition, construction, equipping, and installation of a project;

(2) The cost of acquiring real property or rights in real property and any cost incidental thereto;

(3) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a project which is not paid by the vendor, supplier, delivery person, or contractor or otherwise provided;

(4) The cost of architectural and engineering services, including, but not limited to, estimates, plans, specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a project;

(5) The cost required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a project;

(6) The cost required for the installation of utilities, including, but not limited to: Water; sewer; sewer treatment; gas; electricity; and communications, including offsite construction of facilities paid for by the project owner; and

(7) All other costs comparable with those described in this section.

Source: Laws 2010, LB1018, § 5.

77-1006 Approved project, defined.

Approved project means any project that is certified by a municipality under the Nebraska Advantage Transformational Tourism and Redevelopment Act.

Source: Laws 2010, LB1018, § 6.

77-1007 Cultural development, defined.

Cultural development means a real estate development with a primary purpose of promoting cultural education or development, such as a museum or related visual arts centers, performing arts facility, or facilities housing, incubating, developing, or promoting art, music, theater, dance, zoology, botany, natural history, cultural history, or the sciences.

Source: Laws 2010, LB1018, § 7.

77-1008 Destination dining, defined.

Destination dining means a real estate development primarily selling and serving prepared food and beverage to the public in a setting with sit-down dining. In addition, the development must offer a unique food or experience concept not found in this state within (1) the same metropolitan statistical area as determined by the United States Office of Management and Budget and (2) a fifty-mile radius of the development.

Source: Laws 2010, LB1018, § 8.

77-1009 Entertainment destination center, defined.

Entertainment destination center means a facility containing a minimum of two hundred thousand square feet of gross leasable area adjacent or complementary to an existing tourism attraction, an approved tourism development project, or a convention facility, and which provides a variety of entertainment and leisure options that contain at least six full-service restaurants and at least three additional entertainment venues, including, but not limited to, live entertainment, multiplex theaters, large-format theaters, motion simulators, family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions, or other cultural and leisure-time activities. Entertainment, food, and drink options and adjacent lodging shall occupy a minimum of sixty percent of the total gross area. Other retail stores shall occupy no more than forty percent of the total gross area.

Source: Laws 2010, LB1018, § 9.

77-1010 Entitlement period, defined.

Entitlement period means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the ninth year following the year of application.

Source: Laws 2010, LB1018, § 10.

77-1011 Full-service restaurant, defined.

Full-service restaurant means any public place (1) which is kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served, (2) which has no sleeping accommodations, (3) which has adequate and sanitary kitchen and dining room equipment and capacity and a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests to consume

on premise, and (4) which has wait staff and table service with an average per-table bill of at least fifteen dollars.

Source: Laws 2010, LB1018, § 11.

77-1012 Historical redevelopment, defined.

Historical redevelopment means a real estate development project that redevelops a historic building, as listed on either the National Register of Historic Places or the Nebraska Historic Buildings Survey. The reuse of the historic building can be any approved use, including retail for an entertainment destination center or a mixed-use project.

Source: Laws 2010, LB1018, § 12.

77-1013 Investment, defined.

Investment means the value of qualified property incorporated into or used at the project. For qualified property owned by the taxpayer, the value shall be the original cost of the property. Investment does not include real property for a tourism development project.

Source: Laws 2010, LB1018, § 13.

77-1014 Lodging, defined.

(1) Lodging means any lodging facility with the following attributes:

(a) The facility constitutes a portion of an approved project and represents less than fifty percent of the total approved cost of the tourism attraction project, or the facility is to be located on recreational property owned or leased by the state or the federal government and has received prior approval from the appropriate state or federal agency;

(b) The facility utilizes a historical redevelopment; or

(c) The facility involves the construction, reconstruction, restoration, rehabilitation, or upgrade of a full-service lodging facility having not less than two hundred fifty guestrooms, with reconstruction, restoration, rehabilitation, or upgrade costs exceeding the minimum. The hotel facilities or attached conference facility must also include a minimum of fifteen thousand square feet of net function space, including exhibit space, ballrooms, meeting rooms, or lecture halls.

(2) Lodging includes a lodging facility constructed as part of a development prior to the construction of retail development or a tourism attraction under the Nebraska Advantage Transformational Tourism and Redevelopment Act.

Source: Laws 2010, LB1018, § 14.

77-1015 Mixed-use project, defined.

Mixed-use project means a facility containing a minimum of fifty thousand square feet. The project must include at least two vertical stories of usable or leasable space and contain a minimum of two uses, such as restaurant, office, retail, or residential, not including parking. Retail stores shall occupy no more than forty percent of the total gross usable area.

Source: Laws 2010, LB1018, § 15.

77-1016 Nebraska crafts and products center, defined.

Nebraska crafts and products center means a real estate retail development primarily selling products created, grown, or assembled in Nebraska. Nebraska crafts and products must constitute a minimum of fifty percent of the total sales volume of the development.

Source: Laws 2010, LB1018, § 16.

77-1017 Project, defined.

Project means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten years, construction, and equipping of a tourism attraction or redevelopment project; the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction or redevelopment project, including, but not limited to, surveys; installation of utilities which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and offsite construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that allows the approved company to attract persons.

Source: Laws 2010, LB1018, § 17.

77-1018 Qualified business, defined.

(1) For a tourism development project, qualified business means any business engaged in:

- (a) Cultural development;
- (b) Historical redevelopment;
- (c) Recreation facilities;
- (d) Entertainment destination centers;
- (e) Lodging;
- (f) Destination dining;
- (g) Tourism attraction;
- (h) Nebraska crafts and products center; or
- (i) Any combination of the activities listed in this subsection.

(2) For a redevelopment project, qualified business means any business engaged in:

- (a) Cultural development;
- (b) Historical redevelopment;
- (c) Recreation facilities;
- (d) Entertainment destination centers;
- (e) Mixed-use projects;
- (f) Lodging;
- (g) Full-service restaurants or destination dining;
- (h) Residential development;
- (i) Retail development;
- (j) Structured parking;
- (k) Tourism attraction;

- (l) Nebraska crafts and products center; or
(m) Any combination of the activities listed in this subsection.

Source: Laws 2010, LB1018, § 18.

77-1019 Qualified property, defined.

(1) Qualified property means any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, as amended, or the components of such property, that will be located and used at the project.

(2) Qualified property does not include (a) aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or (b) property that is rented by the taxpayer qualifying under the Nebraska Advantage Transformational Tourism and Redevelopment Act to another person.

Source: Laws 2010, LB1018, § 19.

77-1020 Recreation facility, defined.

Recreation facility means any real estate project with a primary purpose of promoting and hosting sports or recreation activities, including sports facilities, golf courses, beaches, parks, water parks, amusement parks, and related support amenities.

Source: Laws 2010, LB1018, § 20.

77-1021 Redevelopment project, defined.

Redevelopment project means a project proposed on a parcel or parcels previously developed with real property improvements. Current usage cannot include agriculture or livestock. The redevelopment project must be within the municipal limits of a municipality. The existing improvements must be more than ten years old or have been demolished prior to application.

Source: Laws 2010, LB1018, § 21.

77-1022 Related persons, defined.

Related persons means any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary group, if incorporated, or any persons who are considered to be related persons under either section 267(b) and (c) or section 707(b) of the Internal Revenue Code of 1986, as amended.

Source: Laws 2010, LB1018, § 22.

77-1023 Structured parking, defined.

Structured parking means a real estate development used primarily as a covered parking facility for automobiles or related personal vehicles. The parking facility must have a minimum of two levels of parking above or below ground.

Source: Laws 2010, LB1018, § 23.

77-1024 Taxpayer, defined.

(1) 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.

(2) 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 Internal Revenue Code of 1986, as amended, hold an ownership interest of ten percent or more.

Source: Laws 2010, LB1018, § 24.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-1025 Tourism attraction, defined.

Tourism attraction means a place of interest where tourists visit, typically for the inherent or exhibited cultural value, historical significance, natural or built beauty, or amusement opportunities, such as historical places, monuments, zoos, aquaria, museums, art galleries, botanical gardens, skyscrapers, parks, forests, natural recreation areas, theme parks, ethnic enclaves, historic transportation, and landmarks.

Source: Laws 2010, LB1018, § 25.

77-1026 Year, defined.

Year means the taxable year of the taxpayer.

Source: Laws 2010, LB1018, § 26.

77-1027 Year of application, defined.

Year of application means the year that a completed application is filed under the Nebraska Advantage Transformational Tourism and Redevelopment Act.

Source: Laws 2010, LB1018, § 27.

77-1028 Election required; procedures applicable.

The powers granted by the Nebraska Advantage Transformational Tourism and Redevelopment Act shall not be exercised unless and until the question of directing the proceeds of the local option sales tax as authorized under the act has been submitted at a primary, general, or special election held within the municipality and in which all registered voters are entitled to vote on such question. The officials of the municipality shall order the submission of the question by submitting a certified copy of the resolution proposing the tax to the election commissioner or county clerk. The question may include any terms and conditions set forth in the resolution, such as a termination date, and shall include the following language: Shall the municipality direct the local option sales tax collected within an area defined by the municipality to require redevelopment or as a tourism development project for the benefit of that area? If a majority of the votes cast upon the question are in favor, the governing

body may so direct the tax. If a majority of those voting on the question are opposed, the governing body shall not so direct the tax. Once approved, the municipality may exercise the powers granted by the act for a period of ten years. Any election under this section shall be conducted in accordance with the procedures provided in the Election Act.

Source: Laws 2010, LB1018, § 28.

Cross References

Election Act, see section 32-101.

77-1029 Verification of work eligibility status.

A municipality shall not approve or grant to any person any incentive under the Nebraska Advantage Transformational Tourism and Redevelopment Act unless the taxpayer provides evidence satisfactory to the municipality that the taxpayer electronically verified the work eligibility status of all newly hired employees employed in Nebraska.

Source: Laws 2010, LB1018, § 29.

77-1030 Application; form; contents; confidentiality; fee; municipality; duties; certification; written agreement; contents; modification.

(1) In order to utilize the incentives set forth in the Nebraska Advantage Transformational Tourism and Redevelopment Act, the taxpayer shall file an application, on a form developed by an association of municipalities organized statewide, requesting an agreement.

(2) The application shall contain:

(a) A written statement describing the plan of employment and investment for a qualified business in this state;

(b) Sufficient documents, plans, and specifications as required by the municipality to support the plan and to define a project and a feasibility study. The plans shall include evidence that demonstrates that the project is feasible only with the incentives provided by the act;

(c) A nonrefundable application fee of two thousand five hundred dollars; and

(d) A timetable showing the expected local option sales tax refunds and what year they are expected to be claimed.

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 and investment.

(3) An application must be complete to establish the date of the application. An application shall be considered complete once it contains the items listed in subsection (2) of this section, regardless of the municipality's additional needs pertaining to information or clarification in order to approve or not approve the application.

(4) The municipality shall conduct an internal review of the feasibility study. If the municipality determines that the feasibility study demonstrates that the project can meet the requirements of the act, then the municipality shall conduct its own study with an independent third party, the cost of which shall be paid in full by the applicant. The cost of the study required under this subsection shall be in addition to the fee required under subsection (2) of this section. The purpose of the study is to verify or nullify the results of the

feasibility study provided by the applicant. Additionally, the study shall examine the ability of the applicant to meet the requirements of the act. The study shall make a recommendation to the municipality on whether to proceed with the project or not.

(5) Once satisfied that the plan in the application defines a project consistent with the purposes stated in the Nebraska Advantage Transformational Tourism and Redevelopment Act in one or more qualified business activities within this state, that the taxpayer and the plan will qualify for incentives under the act, and that the required levels of employment and investment for the project will be met prior to the end of the fourth year after the year in which the application was submitted, the municipality shall certify the application. Certification shall require approval by a majority vote by the members of the governing body of the municipality. A municipality shall notify the Department of Revenue of any application certified under this section on or before January 1 immediately following such certification. For any application certified under this section prior to July 18, 2014, the certifying municipality shall notify the Department of Revenue of such application on or before January 1, 2015.

(6) After certification, the taxpayer and the municipality shall enter into a written agreement. The taxpayer shall agree to complete the project, and the municipality shall designate the approved plan 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 Transformational Tourism and Redevelopment Act. 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 levels 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) A requirement that the company update the municipality annually on any changes in plans or circumstances which affect the timetable of local option sales tax refunds as set out in the application. If the company fails to comply with this requirement, the municipality may defer any pending local option sales tax refunds until the company does comply.

(7) A taxpayer and a municipality may enter into agreements for more than one project and may include more than one project in a single agreement. The projects may be either sequential or concurrent. A project may involve the same location as another project. No new employment or new investment shall be included in more than one project for either the meeting of the employment or investment requirements or the creation of incentives. When projects overlap and the plans do not clearly specify, then the taxpayer shall specify in which project the employment or investment belongs.

(8) The taxpayer may request that an agreement be modified if the modification is consistent with the purposes of the act and does not require a change in the description of the project. Once satisfied that the modification to the agreement is consistent with the purposes stated in the act, the municipality and taxpayer may amend the agreement.

(9) The agreement shall include performance-based metrics to insure compliance with the act.

Source: Laws 2010, LB1018, § 30; Laws 2014, LB851, § 8.
Operative date July 18, 2014.

77-1031 Incentives; tiers; project requirements; refund of taxes.

(1) Applicants may qualify for incentives under the Nebraska Advantage Transformational Tourism and Redevelopment Act as follows:

(a)(i) Tourism development project, investment in qualified property as required by this subdivision and a net employment increase to the state. Net employment from the project shall be determined at stabilization of the project, typically by the third year, and shall include any lost jobs from semi-competitive venues.

(ii) The investment requirement for a tourism development project is as follows:

(A) Tier 1, fifty million dollars exclusive of land for a project located in a municipality within a county in which the net taxable sales in the preceding calendar year were at least nine hundred million dollars or a municipality within a county bordered by two counties in which the total net taxable sales in the preceding calendar year were at least nine hundred million dollars;

(B) Tier 2, thirty million dollars exclusive of land for a project in a municipality within a county in which the net taxable sales in the preceding calendar year were at least two hundred million dollars but less than nine hundred million dollars;

(C) Tier 3, twenty million dollars exclusive of land for a project in a municipality within a county in which the net taxable sales in the preceding calendar year were at least one hundred million dollars but less than two hundred million dollars; and

(D) Tier 4, ten million dollars exclusive of land for a project in a municipality within a county in which the net taxable sales in the preceding calendar year were less than one hundred million dollars.

(iii) All complete project applications shall be considered by the municipality and certified if the project and taxpayer qualify for incentives. Agreements may be executed with regard to completed project applications. A tourism development project shall be unique and not duplicate any other qualified business in this state within (A) the same metropolitan statistical area as determined by the United States Office of Management and Budget and (B) a fifty-mile radius of the project; and

(b) Redevelopment project, investment in qualified property of at least ten million dollars and a net employment increase to the state, except that for a redevelopment project in a municipality within a county in which the net taxable sales in the preceding calendar year were less than one hundred million dollars, the requirements shall be investment in qualified property of at least seven million five hundred thousand dollars and a net employment increase to the state. Net employment from the project shall be determined by comparing the impact of the project to the impact of not having the project. Agreements may be executed with regard to completed project applications.

(2) In addition to the requirements of subsection (1) of this section:

(a) The project shall be open at least one hundred fifty days each calendar year;

(b) The applicant shall demonstrate that the project is not feasible but for the incentives provided under the act; and

(c) The applicant shall demonstrate that the project has conditional financing prior to completion of the application and final approval of financing before final approval of the application by the municipality.

(3) When the taxpayer has met the requirements contained in the agreement for the project, the taxpayer shall be entitled to the following incentives:

(a) A refund of local option sales tax up to a rate of one and one-half percent from the date of the application through the meeting of the requirements contained in the agreement for the project 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;

(b) Except as provided in subdivision (c) of this subsection for redevelopment projects, a refund of local option sales tax up to a rate of one and one-half percent paid on all types of purchases on which the local option sales tax is levied within the boundaries of the project during each year of the entitlement period in which the taxpayer meets the requirements contained in the agreement for the project; and

(c) For a redevelopment project, if the taxpayer has been collecting local option sales tax for more than twenty-four months prior to completion of the project, a refund of the increase in local option sales tax revenue collected by the taxpayer within the boundaries of the project each calendar year after the completion of the project.

Source: Laws 2010, LB1018, § 31.

77-1032 Department of Revenue; duties; review of projects; recapture of incentives; Nebraska Advantage Transformational Tourism and Redevelopment Act Cash Fund; created; use; investment.

(1) The Department of Revenue shall contract with an independent consultant to review each project under the Nebraska Advantage Transformational Tourism and Redevelopment Act every fifth year following July 15, 2010. The review shall be paid for by each project owner. The review shall examine patronage from outside the metropolitan statistical area as defined by the United States Office of Management and Budget in which the project is located, sales data, and employment records to determine the project owner's continued compliance with the provisions of the act. The project owner shall comply with the provisions of this subsection or be subject to the recapture provisions of this section. If it is determined that the project owner was not in compliance, the

municipality may recapture all or a portion of the incentives provided under the act.

(2) If the taxpayer fails to meet the requirements contained in the agreement for the project either by the end of the fourth year after the end of the year the application was submitted or for the entire entitlement period, all or a portion of the incentives provided under the act shall be recaptured on behalf of the municipality.

(3) Notwithstanding any other limitations contained in the laws of this state, collection of any taxes deemed to be underpayments by this section shall be allowed for a period of four years after the end of the entitlement period.

(4) Any amounts due under this section shall be recaptured notwithstanding other allowable incentives and shall not be subsequently refunded under any provision of the act unless the recapture was in error.

(5) The recapture required by this section shall not occur if (a) the failure to maintain the required levels of employment or investment was caused by an act of God or national emergency or (b) the cost of recapture would exceed the amount to be recaptured in the opinion of the municipality.

(6) The Nebraska Advantage Transformational Tourism and Redevelopment Act Cash Fund is created. The fund shall be used by the department to carry out its duties under this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2010, LB1018, § 32.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

77-1033 Transfer of incentives; when; liability for recapture.

(1) The incentives allowed under the Nebraska Advantage Transformational Tourism and Redevelopment Act 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 municipality of the completed transfer, shall be entitled 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 incentives received either before or after the transfer.

Source: Laws 2010, LB1018, § 33.

77-1034 Refunds; interest not allowable.

Interest shall not be allowable on any refunds paid because of incentives earned under the Nebraska Advantage Transformational Tourism and Redevelopment Act.

Source: Laws 2010, LB1018, § 34.

77-1035 Act; restrictions on use.

The Nebraska Advantage Transformational Tourism and Redevelopment Act may not be used for the construction or financing of a stadium or for support facilities for a stadium.

Source: Laws 2010, LB1018, § 35.

ARTICLE 11

NEW MARKETS JOB GROWTH INVESTMENT ACT

Section

- 77-1101. Act, how cited.
- 77-1102. Definitions, where found.
- 77-1103. Applicable percentage, defined.
- 77-1104. Credit allowance date, defined.
- 77-1105. Letter ruling, defined.
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- 77-1108. Qualified active low-income community business, defined.
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- 77-1111. Qualified low-income community investment, defined.
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- 77-1113. Vested tax credit; utilization.
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- 77-1117. Recapture of tax credit.
- 77-1118. Recapture of tax credit; notice of noncompliance; cure period.
- 77-1119. Tax Commissioner; issue letter rulings; request; refusal to issue for good cause; letter ruling; effect.

77-1101 Act, how cited.

Sections 77-1101 to 77-1119 shall be known and may be cited as the New Markets Job Growth Investment Act.

Source: Laws 2012, LB1128, § 1.

77-1102 Definitions, where found.

For purposes of the New Markets Job Growth Investment Act, the definitions in sections 77-1103 to 77-1112 apply.

Source: Laws 2012, LB1128, § 2.

77-1103 Applicable percentage, defined.

Applicable percentage means zero percent for the first two credit allowance dates, seven percent for the third credit allowance date, and eight percent for the next four credit allowance dates.

Source: Laws 2012, LB1128, § 3.

77-1104 Credit allowance date, defined.

Credit allowance date means, with respect to any qualified equity investment:

- (1) The date on which such investment is initially made; and
- (2) Each of the six anniversary dates of such date thereafter.

Source: Laws 2012, LB1128, § 4.

77-1105 Letter ruling, defined.

Letter ruling means a written interpretation of law to a specific set of facts provided by the applicant requesting a letter ruling.

Source: Laws 2012, LB1128, § 5.

77-1106 Long-term debt security, defined.

Long-term debt security means any debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least seven years after the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its original maturity date. The qualified community development entity that issues the debt instrument may not make cash interest payments on the debt instrument during the period beginning on the date of issuance and ending on the final credit allowance date that exceed the cumulative operating income as defined by regulations adopted under section 45D of the Internal Revenue Code of 1986, as amended, of the qualified community development entity for that period prior to giving effect to the expense of such cash interest payments. This in no way limits the holder's ability to accelerate payments on the debt instrument if the issuer has defaulted on covenants designed to ensure compliance with this section or section 45D of the code.

Source: Laws 2012, LB1128, § 6.

77-1107 Purchase price, defined.

Purchase price means the amount paid to the issuer of a qualified equity investment for the qualified equity investment.

Source: Laws 2012, LB1128, § 7.

77-1108 Qualified active low-income community business, defined.

Qualified active low-income community business has the meaning given such term in section 45D of the Internal Revenue Code of 1986, as amended, and 26 C.F.R. 1.45D-1. A business shall be considered a qualified active low-income community business for the duration of the qualified community development entity's investment in, or loan to, the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business throughout the entire period of the investment or loan. The term excludes any business that derives or projects to derive fifteen percent or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business (1) does not derive or project to derive fifteen percent or more of its annual revenue from the rental or sale of real estate and (2) is the primary tenant of the real estate leased from the first business.

Source: Laws 2012, LB1128, § 8.

77-1109 Qualified community development entity, defined.

Qualified community development entity has the meaning given such term in section 45D of the Internal Revenue Code of 1986, as amended, if such entity has entered into an allocation agreement with the Community Development

Financial Institutions Fund of the United States Department of the Treasury with respect to credits authorized by section 45D of the code which includes the State of Nebraska within the service area set forth in such allocation agreement. The term includes affiliated entities and subordinate community development entities of any such qualified community development entity.

Source: Laws 2012, LB1128, § 9.

77-1110 Qualified equity investment, defined.

(1) Qualified equity investment means any equity investment in, or long-term debt security issued by, a qualified community development entity that:

(a) Is acquired after January 1, 2012, at its original issuance solely in exchange for cash;

(b) Has at least eighty-five percent of its cash purchase price used by the issuer to make qualified low-income community investments in qualified active low-income community businesses located in this state by the first anniversary of the initial credit allowance date;

(c) Is designated by the issuer as a qualified equity investment; and

(d) Is certified by the Tax Commissioner as not exceeding the limitation contained in section 77-1115.

(2) The term includes any qualified equity investment that does not meet the requirements of subdivision (1)(a) of this section if such investment was a qualified equity investment in the hands of a prior holder.

Source: Laws 2012, LB1128, § 10.

77-1111 Qualified low-income community investment, defined.

Qualified low-income community investment means any capital or equity investment in, or loan to, any qualified active low-income community business. With respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in such business, on a collective basis with all of its affiliates, shall be ten million dollars whether issued to one or several qualified community development entities.

Source: Laws 2012, LB1128, § 11.

77-1112 Tax credit, defined.

Tax credit means a credit against the tax otherwise due under the Nebraska Revenue Act of 1967 or sections 44-101 to 44-165, 77-907 to 77-918, or 77-3801 to 77-3807.

Source: Laws 2012, LB1128, § 12.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-1113 Vested tax credit; utilization.

A person or entity that acquires a qualified equity investment earns a vested tax credit against the tax imposed by the Nebraska Revenue Act of 1967 or sections 44-101 to 44-165, 77-907 to 77-918, or 77-3801 to 77-3807 that may be utilized as follows:

(1) On each credit allowance date of such qualified equity investment such acquirer, or subsequent holder of the qualified equity investment, shall be entitled to utilize a portion of such tax credit during the taxable year that includes such credit allowance date;

(2) The tax credit amount shall be equal to the applicable percentage for such credit allowance date multiplied by the purchase price paid to the issuer of such qualified equity investment; and

(3) The amount of the tax credit claimed shall not exceed the amount of the taxpayer's tax liability for the tax year for which the tax credit is claimed.

Any taxpayer that claims a tax credit shall not be required to pay any additional retaliatory tax under section 44-150 as a result of claiming such tax credit.

Source: Laws 2012, LB1128, § 13.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-1114 Tax credit; not refundable or transferable; allocation; carry forward.

No tax credit claimed under the New Markets Job Growth Investment Act shall be refundable or transferable. Tax credits earned by a partnership, limited liability company, subchapter S corporation, or other pass-through entity may be allocated to the partners, members, or shareholders of such entity for their direct use in accordance with any agreement among such partners, members, or shareholders. Any amount of tax credit that the taxpayer is prohibited from claiming in a taxable year may be carried forward to any of the taxpayer's five subsequent taxable years.

Source: Laws 2012, LB1128, § 14.

77-1115 Tax Commissioner; limit tax credit utilization.

The Tax Commissioner shall limit the monetary amount of qualified equity investments permitted under the New Markets Job Growth Investment Act to a level necessary to limit tax credit utilization in any fiscal year at no more than fifteen million dollars of new tax credits. Such limitation on qualified equity investments shall be based on the anticipated utilization of credits without regard to the potential for taxpayers to carry forward tax credits to later tax years.

Source: Laws 2012, LB1128, § 15.

77-1116 Qualified community development entity; application; form; contents; Tax Commissioner; grant or deny; notice of certification; lapse of certification; when.

(1) A qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax credits under the New Markets Job Growth Investment Act shall apply to the Tax Commissioner. The qualified community development entity shall submit an application on a form that the Tax Commissioner provides that includes:

(a) Evidence of the entity's certification as a qualified community development entity, including evidence of the service area of the entity that includes this state;

(b) A copy of the allocation agreement executed by the entity, or its controlling entity, and the Community Development Financial Institutions Fund referred to in section 77-1109;

(c) A certificate executed by an executive officer of the entity attesting that the allocation agreement remains in effect and has not been revoked or cancelled by the Community Development Financial Institutions Fund referred to in section 77-1109;

(d) A description of the proposed amount, structure, and purchaser of the equity investment or long-term debt security;

(e) Identifying information for any taxpayer eligible to utilize tax credits earned as a result of the issuance of the qualified equity investment;

(f) Information regarding the proposed use of proceeds from the issuance of the qualified equity investment; and

(g) A nonrefundable application fee of five thousand dollars.

(2) Within thirty days after receipt of a completed application containing the information necessary for the Tax Commissioner to certify a potential qualified equity investment, including the payment of the application fee, the Tax Commissioner shall grant or deny the application in full or in part. If the Tax Commissioner denies any part of the application, the Tax Commissioner shall inform the qualified community development entity of the grounds for the denial. If the qualified community development entity provides any additional information required by the Tax Commissioner or otherwise completes its application within fifteen days after the notice of denial, the application shall be considered completed as of the original date of submission. If the qualified community development entity fails to provide the information or complete its application within the fifteen-day period, the application remains denied and must be resubmitted in full with a new submission date.

(3) If the application is deemed complete, the Tax Commissioner shall certify the proposed equity investment or long-term debt security as a qualified equity investment that is eligible for tax credits, subject to the limitations contained in section 77-1115. The Tax Commissioner shall provide written notice of the certification to the qualified community development entity. The notice shall include the names of those taxpayers who are eligible to utilize the credits and their respective credit amounts. If the names of the taxpayers who are eligible to utilize the credits change due to a transfer of a qualified equity investment or a change in an allocation pursuant to section 77-1114, the qualified community development entity shall notify the Tax Commissioner of such change.

(4) The Tax Commissioner shall certify qualified equity investments in the order applications are received. Applications received on the same day shall be deemed to have been received simultaneously. For applications received on the same day and deemed complete, the Tax Commissioner shall certify, consistent with remaining tax credit capacity, qualified equity investments in proportionate percentages based upon the ratio of the amount of qualified equity investment requested in an application to the total amount of qualified equity investments requested in all applications received on the same day.

(5) Once the Tax Commissioner has certified qualified equity investments that, on a cumulative basis, are eligible for the maximum limitation contained in section 77-1115, the Tax Commissioner may not certify any more qualified equity investments for that fiscal year. If a pending request cannot be fully certified, the Tax Commissioner shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial credit.

(6) Within thirty days after receiving notice of certification, the qualified community development entity shall issue the qualified equity investment and receive cash in the amount of the certified amount. The qualified community development entity shall provide the Tax Commissioner with evidence of the receipt of the cash investment within ten business days after receipt. If the qualified community development entity does not receive the cash investment and issue the qualified equity investment within thirty days after receipt of the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to the Tax Commissioner for certification. A certification that lapses reverts back to the Tax Commissioner and may be reissued only in accordance with the application process outlined in this section.

Source: Laws 2012, LB1128, § 16.

77-1117 Recapture of tax credit.

The Tax Commissioner shall recapture, from the taxpayer that claimed the credit on a return, the tax credit allowed under the New Markets Job Growth Investment Act if:

(1) Any amount of the federal tax credit available with respect to a qualified equity investment that is eligible for a tax credit under this section is recaptured under section 45D of the Internal Revenue Code of 1986, as amended. In such case the state's recapture shall be proportionate to the federal recapture with respect to such qualified equity investment;

(2) The issuer redeems or makes principal repayment with respect to a qualified equity investment prior to the seventh credit allowance date. In such case recapture shall be proportionate to the amount of the redemption or repayment with respect to such qualified equity investment; or

(3) The issuer fails to invest and satisfy the requirements of subdivision (1)(b) of section 77-1110 and maintain such level of investment in qualified low-income community investments in Nebraska until the last credit allowance date for the qualified equity investment. For purposes of this section, an investment shall be considered held by an issuer even if the investment has been sold or repaid if the issuer reinvests an amount equal to the capital returned to or recovered by the issuer from the original investment, exclusive of any profits realized, in another qualified low-income community investment within twelve months of the receipt of such capital. An issuer shall not be required to reinvest capital returned from qualified low-income community investments after the sixth credit allowance date, the proceeds of which were used to make the qualified low-income community investment, and the qualified low-income community investment shall be considered held by the issuer through the seventh credit allowance date.

Source: Laws 2012, LB1128, § 17.

77-1118 Recapture of tax credit; notice of noncompliance; cure period.

The enforcement of section 77-1117 shall be subject to a six-month cure period. No recapture under section 77-1117 shall occur until the qualified community development entity has been given notice of noncompliance and afforded six months from the date of such notice to cure the noncompliance.

Source: Laws 2012, LB1128, § 18.

77-1119 Tax Commissioner; issue letter rulings; request; refusal to issue for good cause; letter ruling; effect.

(1) The Tax Commissioner shall issue letter rulings regarding the tax credit program authorized under the New Markets Job Growth Investment Act subject to the terms and conditions set forth in rules and regulations.

(2) The Tax Commissioner shall respond to a request for a letter ruling within sixty days after receipt of such request. The applicant may provide a draft letter ruling for the Tax Commissioner's consideration. The applicant may withdraw the request for a letter ruling, in writing, prior to the issuance of the letter ruling. The Tax Commissioner may refuse to issue a letter ruling for good cause, but shall list the specific reasons for refusing to issue the letter ruling. Good cause includes, but is not limited to:

(a) The applicant requests the Tax Commissioner to determine whether a statute is constitutional or a rule or regulation is lawful;

(b) The request involves a hypothetical situation or alternative plans;

(c) The facts or issues presented in the request are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a letter ruling; or

(d) The issue is currently being considered in a rulemaking procedure, contested case, or other agency or judicial proceeding that may definitely resolve the issue.

(3) A letter ruling shall bind the Tax Commissioner until such time as the taxpayer or its shareholders, members, or partners, as applicable, claim all of such tax credits on a tax return which is the topic of the letter ruling, subject to the terms and conditions set forth in rules and regulations. The letter ruling shall apply only to the applicant.

(4) In rendering letter rulings and making other determinations under this section, to the extent applicable, the Tax Commissioner shall look for guidance to section 45D of the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder. The Tax Commissioner may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2012, LB1128, § 19.

ARTICLE 12**PERSONAL PROPERTY, WHERE AND HOW LISTED**

Section

77-1233.04. Taxable tangible personal property tax returns; change in value; omitted property; procedure; penalty; county assessor; duties.

77-1233.04 Taxable 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 taxable tangible personal property omitted from a personal property return of any taxpayer. The county assessor shall change the reported valuation of any item of taxable 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 tangible personal property at net book value. The county assessor shall list or change the valuation of any item of taxable tangible personal property for the current taxing period and the three previous taxing periods or any taxing period included therein.

(2) The taxable 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 June 30 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 July 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 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, LB166, § 5; Laws 2008, LB965, § 11; Laws 2013, LB28, § 1.

ARTICLE 13

ASSESSMENT OF PROPERTY

Section

77-1301.

Real property; assessment date; notice of preliminary valuation.

77-1303.

Assessment roll.

Section

- 77-1311. County assessor; duties.
- 77-1311.03. County assessor; systematic inspection and review; adjustment required.
- 77-1314. County assessor; use of income approach; when; duties; petition Tax Equalization and Review Commission; hearing; order.
- 77-1315. Adjustment to real property assessment roll; county assessor; duties; publication.
- 77-1315.01. Overvaluation or undervaluation; county assessor; report.
- 77-1317. Real property; assessment; omitted lands; correction; exceptions.
- 77-1318. Real property taxes; back interest and penalties; when; appeal.
- 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.
- 77-1340. Repealed. Laws 2012, LB1101, § 4.
- 77-1340.04. Property Tax Administrator; relinquish property tax function; employees; transfer of property; appointment of county assessor; allocation of costs; contracts.
- 77-1342. Department of Revenue Property Assessment Division Cash Fund; created; use; investment.
- 77-1347. Agricultural or horticultural lands; special valuation; disqualification.
- 77-1355. Repealed. Laws 2011, LB 210, § 17.
- 77-1359. Agricultural and horticultural land; legislative findings; terms, defined.
- 77-1363. Agricultural and horticultural land; classes and subclasses.
- 77-1371. Comparable sales; use; guidelines.
- 77-1374. Improvements on leased public lands; assessment; change of ownership; filing required; collection of tax.
- 77-1375. Improvements on leased lands; how assessed; apportionment.

77-1301 Real property; assessment date; notice of preliminary valuation.

(1) All real property in this state subject to taxation shall be assessed as of January 1 at 12:01 a.m., which assessment shall be used as a basis of taxation until the next assessment.

(2) Beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the county assessor shall provide notice of preliminary valuations to real property owners on or before January 15 of each year. Such notice shall be (a) mailed to the taxpayer or (b) published on a web site maintained by the county assessor or by the county.

(3) The county assessor shall complete the assessment of real property on or before March 19 of each year, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the county assessor shall complete the assessment of real property on or before March 25 of each year.

Source: Laws 1903, c. 73, § 105, p. 422; R.S.1913, § 6420; Laws 1921, c. 125, § 1, p. 535; C.S.1922, § 5955; Laws 1925, c. 167, § 1, p. 439; C.S.1929, § 77-1601; Laws 1933, c. 130, § 1, p. 507; C.S.Supp.,1941, § 77-1601; R.S.1943, § 77-1301; Laws 1945, c. 188, § 1, p. 581; Laws 1947, c. 251, § 31, p. 823; Laws 1947, c. 255, § 1, p. 835; Laws 1953, c. 270, § 1, p. 891; Laws 1953, c. 269, § 1, p. 889; Laws 1955, c. 288, § 19, p. 913; Laws 1959, c. 355, § 20, p. 1263; Laws 1959, c. 370, § 1, p. 1301; Laws 1963, c. 450, § 1, p. 1474; Laws 1980, LB 742, § 1; Laws 1984, LB 833,

§ 1; Laws 1987, LB 508, § 36; Laws 1992, LB 1063, § 114; Laws 1992, Second Spec. Sess., LB 1, § 87; Laws 1997, LB 270, § 63; Laws 1999, LB 194, § 15; Laws 2004, LB 973, § 18; Laws 2011, LB384, § 6.

77-1303 Assessment roll.

(1) On or before March 19 of each year, the county assessor or county clerk shall make up an assessment roll of the taxable real property in the county, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the county assessor or county clerk shall make up an assessment roll of the taxable real property in the county on or before March 25.

(2) The county assessor or county clerk shall enter in the proper column, opposite each respective parcel, the name of the owner thereof so far as he or she is able to ascertain the same. The assessment roll shall contain columns in which may be shown the number of acres or lots and the value thereof, the improvements and the value thereof, the total value of the acres or lots and improvements, and the improvements on leased lands and the value and owner thereof and such other columns as may be required.

Source: Laws 1903, c. 73, § 106, p. 422; Laws 1905, c. 111, § 1, p. 510; R.S.1913, § 6421; Laws 1919, c. 137, § 1, p. 314; C.S.1922, § 5956; C.S.1929, § 77-1602; Laws 1943, c. 175, § 1, p. 609; R.S.1943, § 77-1303; Laws 1945, c. 189, § 1, p. 583; Laws 1947, c. 250, § 22, p. 795; Laws 1947, c. 251, § 32, p. 824; Laws 1951, c. 264, § 1, p. 892; Laws 1953, c. 270, § 2, p. 893; Laws 1955, c. 288, § 20, p. 915; Laws 1959, c. 355, § 21, p. 1265; Laws 1979, LB 187, § 204; Laws 1981, LB 179, § 10; Laws 1987, LB 508, § 42; Laws 1988, LB 842, § 1; Laws 1992, LB 1063, § 118; Laws 1992, Second Spec. Sess., LB 1, § 91; Laws 1997, LB 270, § 65; Laws 1999, LB 194, § 16; Laws 2004, LB 973, § 19; Laws 2005, LB 263, § 7; Laws 2011, LB384, § 7.

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;

(5) Prepare the assessment roll as defined in section 77-129 and described in section 77-1303; and

(6) Beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, provide, between January 15 and March 1 of each year, the opportunity to real property owners to meet in person with the county assessor or the county assessor's designated representative. If the real property owner does not notify the county assessor or the county assessor's designated representative by February 1 of the real property owner's intent to meet in person, the real property owner waives the opportunity to meet in person with the county assessor or the county assessor's designated representative. During such meetings, the county assessor or the county assessor's designated representative shall provide a basis for the property valuation contained in the notice of preliminary valuation sent pursuant to section 77-1301 and accept any information the property owner provides relevant to the property value.

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; Laws 2011, LB384, § 8.

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, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the inspection and review shall be conducted on or before March 25. 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; Laws 2011, LB384, § 9.

77-1314 County assessor; use of income approach; when; duties; petition Tax Equalization and Review Commission; hearing; order.

(1) When determining the actual value of two or more vacant or unimproved lots in the same subdivision and the same tax district that are owned by the same person and are held for sale or resale and that were elected to be treated as one parcel pursuant to subsection (3) of section 77-132, the county assessor shall utilize the income approach, including the use of a discounted cash-flow analysis.

(2) If a county assessor, based on the facts and circumstances, believes that the income approach, including the use of a discounted cash-flow analysis, does not result in a valuation at actual value, then the county assessor shall present such facts and circumstances to the county board of equalization. If the county board of equalization, based on such facts and circumstances, concurs with the county assessor, then the county board of equalization shall petition the Tax Equalization and Review Commission to consider the county assessor's utilization of another professionally accepted mass appraisal technique that, based on the facts and circumstances presented by a county board of equalization, would result in a substantially different determination of actual value. Petitions must be filed within thirty days after the property is assessed. Hearings held pursuant to this section may be held by means of videoconference or telephone conference. The burden of proof is on the petitioning county board of equalization to show that failure to make an adjustment to the professionally accepted mass appraisal technique utilized would result in a value that is not equitable and in accordance with the law. At the hearing, the commission may receive testimony from any interested person. After a hearing, the commission shall, within the powers granted in section 77-5023, enter its order based on evidence presented to it at such hearing.

Source: Laws 2014, LB191, § 16.

Effective date July 18, 2014.

77-1315 Adjustment to real property assessment roll; county assessor; duties; publication.

(1) The county assessor shall, after March 19 and on or before June 1, implement adjustments to the real property assessment roll for actions of the Tax Equalization and Review Commission, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the adjustments shall be implemented after March 25 and on or before June 1.

(2) On or before June 1, in addition to the notice of preliminary valuation sent pursuant to section 77-1301, the county assessor shall notify the owner of record as of May 20 of every item of real property which has been assessed at a value different than in the previous year. Such notice shall be given by first-class mail addressed to such owner's last-known address. It shall identify the item of real property and state the old and new valuation, the date of convening of the county board of equalization, and the dates for filing a protest.

(3) Immediately upon completion of the assessment roll, the county assessor shall cause to be published in a newspaper of general circulation in the county a certification that the assessment roll is complete and notices of valuation changes have been mailed and provide the final date for filing valuation protests with the county board of equalization.

(4) The county assessor shall annually, on or before June 6, post in his or her office and, as designated by the county board, mail to a newspaper of general

circulation and to licensed broadcast media in the county the assessment ratios as found in his or her county as determined by the Tax Equalization and Review Commission and any other statistical measures, including, but not limited to, the assessment-to-sales ratio, the coefficient of dispersion, and the price-related differential.

Source: Laws 1903, c. 73, § 116, p. 427; Laws 1909, c. 111, § 1, p. 444; R.S.1913, § 6431; C.S.1922, § 5966; Laws 1927, c. 179, § 1, p. 519; C.S.1929, § 77-1612; R.S.1943, § 77-1315; Laws 1947, c. 250, § 26, p. 798; Laws 1947, c. 251, § 34, p. 825; Laws 1953, c. 271, § 1, p. 896; Laws 1953, c. 270, § 4, p. 894; Laws 1953, c. 272, § 1, p. 897; Laws 1959, c. 355, § 22, p. 1266; Laws 1959, c. 370, § 4, p. 1305; Laws 1971, LB 209, § 1; Laws 1979, LB 187, § 206; Laws 1984, LB 660, § 1; Laws 1992, LB 1063, § 120; Laws 1992, Second Spec. Sess., LB 1, § 93; Laws 1994, LB 902, § 16; Laws 1995, LB 452, § 18; Laws 1997, LB 270, § 68; Laws 1999, LB 194, § 17; Laws 2001, LB 156, § 1; Laws 2001, LB 170, § 6; Laws 2002, LB 994, § 12; Laws 2004, LB 973, § 20; Laws 2005, LB 261, § 2; Laws 2011, LB384, § 10; Laws 2012, LB822, § 1.

Cross References

For date of convening the county board of equalization, see section 77-1502.

77-1315.01 Overvaluation or undervaluation; county assessor; report.

After March 19 and on or before July 25 or on or before August 10 in counties that have adopted a resolution to extend the deadline for hearing protests under section 77-1502, the county assessor shall report to the county board of equalization any overvaluation or undervaluation of any real property, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the report shall be made after March 25 and on or before July 25 or on or before August 10 in counties that have adopted a resolution to extend the deadline for hearing protests under section 77-1502. The county board of equalization shall consider the report in accordance with section 77-1504.

The current year's assessed valuation of any real property shall not be changed by the county assessor after March 19 except by action of the Tax Equalization and Review Commission or the county board of equalization, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the current year's assessed valuation of any real property shall not be changed after March 25 except by action of the commission or the county board of equalization.

Source: Laws 1997, LB 270, § 69; Laws 1999, LB 194, § 18; Laws 2004, LB 973, § 21; Laws 2005, LB 261, § 3; Laws 2005, LB 283, § 1; Laws 2011, LB384, § 11.

77-1317 Real property; assessment; omitted lands; correction; exceptions.

It shall be the duty of the county assessor to report to the county board of equalization all real property in his or her county that, for any reason, was omitted from the assessment roll for the current year, after the date specified in

section 77-123, or any former year. The assessment shall be made by the county board of equalization in accordance with sections 77-1504 and 77-1507. After county board of equalization action pursuant to section 77-1504 or 77-1507, the county assessor shall correct the assessment and tax rolls as provided in section 77-1613.02. No real property shall be assessed for any prior year under this section when such real property has changed ownership otherwise than by will, inheritance, or gift.

Source: Laws 1903, c. 73, § 118, p. 428; R.S.1913, § 6433; C.S.1922, § 5968; C.S.1929, § 77-1614; R.S.1943, § 77-1317; Laws 1947, c. 250, § 28, p. 798; Laws 1949, c. 232, § 1, p. 643; Laws 1992, LB 1063, § 121; Laws 1992, Second Spec. Sess., LB 1, § 94; Laws 1997, LB 270, § 71; Laws 1999, LB 194, § 19; Laws 2004, LB 973, § 22; Laws 2011, LB384, § 12.

77-1318 Real property taxes; back interest and penalties; when; appeal.

All taxes charged under section 77-1317 shall be exempt from any back interest or penalty and shall be collected in the same manner as other taxes levied upon real estate, except for taxes charged on improvements to real property made after September 1, 1980. Interest at the rate provided in section 77-207 and the following penalties and interest on penalties for late reporting or failure to report such improvements pursuant to section 77-1318.01 shall be collected in the same manner as other taxes levied upon real property. The penalty for late reporting or failure to report improvements made to real property after September 1, 1980, shall be as follows: (1) A penalty of twelve percent of the tax due on the improvements for each taxing period for improvements voluntarily filed or reported after March 19 has passed, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, after March 25 has passed; and (2) a penalty of twenty percent of the tax due on improvements for each taxing period for improvements not voluntarily reported for taxation purposes after March 19 has passed, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, after March 25 has passed. 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 assessed upon such penalty from the date of delinquency of the tax until paid. No penalty excluding interest shall be charged in excess of one thousand dollars per year. For purposes of this section, improvement shall mean any new construction of or change to an item of real property as defined in section 77-103.

Any additional taxes, penalties, or interest on penalties imposed pursuant to this section may be appealed in the same manner as appeals are made under section 77-1233.06.

Source: Laws 1903, c. 73, § 119, p. 428; R.S.1913, § 6434; C.S.1922, § 5969; C.S.1929, § 77-1615; R.S.1943, § 77-1318; Laws 1980, LB 689, § 2; Laws 1984, LB 835, § 7; Laws 1987, LB 508, § 43; Laws 1990, LB 821, § 51; Laws 1997, LB 270, § 72; Laws 1999, LB 194, § 20; Laws 2004, LB 973, § 23; Laws 2011, LB384, § 13.

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 77-1347.01, 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) County assessors and other taxing officials shall electronically report data on the assessed valuation and other features of the property assessment process 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 and other political subdivisions, as well as intercounty comparisons of assessed valuation, including school districts and other political subdivisions. 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; Laws 2009, LB166, § 8; Laws 2011, LB210, § 5.

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 the Compressed Fuel Tax Act, Chapter 77, articles 27 and 35, and sections 66-482 to 66-4,149.

(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; Laws 2011, LB289, § 38.

Cross References

Administrative Procedure Act, see section 84-920.

Compressed Fuel Tax Act, see section 66-697.

77-1340 Repealed. Laws 2012, LB1101, § 4.

77-1340.04 Property Tax Administrator; relinquish property tax function; employees; transfer of property; appointment of county assessor; allocation of costs; contracts.

(1) On July 1, 2013, the Property Tax Administrator shall relinquish the property assessment function in all counties that transferred the assessment function to the Property Tax Administrator and have not reassumed the assessment function prior to such date.

(2) On July 1, 2013, the employees of the Department of Revenue involved in the performance of the county assessment function shall become county employees by operation of law.

(3) At the close of business on June 30, 2013, the Property Tax Administrator shall cease his or her performance of the county assessment function and the county assessor appointed pursuant to subsection (4) of this section shall assume the county assessment function. The Property Tax Administrator shall at that time transfer all books, files, and similar records with regard to the county assessment function of the county and all furniture, computers, and other equipment and property used by the state to perform the county assessment function, other than motor vehicles, to the county assessor.

(4) In such counties, the county board shall appoint an individual with a valid assessor's certificate to the position of county assessor. The appointment shall be effective July 1, 2013. On July 1, 2013, the appointed county assessor shall assume the title and perform the assessment functions and any other duties mandated of the office of county assessor. The appointed assessor shall continue to perform the county assessor's duties until an assessor is elected at the next election.

(5) The Property Tax Administrator shall provide to each county board of a county that transferred the assessment function to the Property Tax Administrator on or before October 1, 2009, a line-item allocation of its total cost of the assessment function for the fiscal year ending June 30, 2009. This allocation of

costs shall also identify the costs attributable to those employees that perform duties in more than one county.

(6) Contracts of the Department of Revenue pertaining to the operation of the county assessment function may be assumed by the county.

(7) Counties in which there are employees of the department who provide services to more than one county shall enter into an agreement pursuant to section 77-1339 for the continued performance of the services provided by the employee. No agreement pursuant to section 77-1339 is necessary if one of the counties in which the employee is providing services agrees to retain the employee as a permanent full-time employee.

Source: Laws 2009, LB121, § 8; Laws 2013, LB55, § 1.

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, 77-1250, and 77-1340. The fund shall be used to carry out any duties and responsibilities of the department, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. The county or multicounty assessment district shall be billed by the department for services rendered. Reimbursements to the department shall be credited to the Department of Revenue Property Assessment Division Cash 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.

Source: Laws 1969, c. 622, § 18, p. 2519; Laws 1971, LB 53, § 8; Laws 1971, LB 158, § 1; 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; Laws 2009, LB121, § 7; Laws 2009, First Spec. Sess., LB3, § 55.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

77-1347 Agricultural or horticultural lands; special valuation; disqualification.

Upon approval of an application, the county assessor shall value the land as provided in section 77-1344 until the land becomes disqualified for such valuation by:

(1) Written notification by the applicant or his or her successor in interest to the county assessor to remove such special valuation;

(2) Except as provided in subsection (2) of section 77-1344, inclusion of the land within the corporate boundaries of any sanitary and improvement district, city, or village; or

(3) The land no longer qualifying as agricultural or horticultural land.

Source: Laws 1974, LB 359, § 5; Laws 1983, LB 26, § 4; Laws 1985, LB 271, § 19; Laws 1989, LB 361, § 12; Laws 2000, LB 968, § 53; Laws 2001, LB 170, § 11; Laws 2002, LB 994, § 18; Laws 2005, LB 263, § 12; Laws 2006, LB 808, § 31; Laws 2010, LB806, § 1.

77-1355 Repealed. Laws 2011, LB 210, § 17.

77-1359 Agricultural and horticultural land; legislative findings; terms, defined.

The Legislature finds and declares that agricultural land and horticultural land shall be a separate and distinct class of real property for purposes of assessment. The assessed value of agricultural land and horticultural land shall not be uniform and proportionate with all other real property, but the assessed value shall be uniform and proportionate within the class of agricultural land and horticultural land.

For purposes of this section and section 77-1363:

(1) Agricultural land and horticultural land means a parcel of land, excluding land associated with a building or enclosed structure located on the parcel, which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land;

(2) Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:

(a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and

(b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production;

(3) Farm home site means land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes and which is located outside of urban areas or outside a platted and zoned subdivision; and

(4) Farm site means the portion of land contiguous to land actively devoted to agriculture which includes improvements that are agricultural or horticultural in nature, including any uninhabitable or unimproved farm home site.

Source: Laws 1985, LB 271, § 4; Laws 1986, LB 817, § 11; Laws 1988, LB 1207, § 3; Laws 1989, LB 361, § 14; Laws 1991, LB 320, § 7;

Laws 1996, LB 934, § 3; Laws 1997, LB 270, § 77; Laws 2000, LB 419, § 1; Laws 2006, LB 808, § 35; Laws 2008, LB777, § 1; Laws 2012, LB750, § 1.

Cross References

Conservation and Preservation Easements Act, see section 76-2,118.

77-1363 Agricultural and horticultural land; classes and subclasses.

Agricultural land and horticultural land shall be divided into classes and subclasses of real property under section 77-103.01, including, but not limited to, irrigated cropland, dryland cropland, grassland, wasteland, nurseries, feed-lots, and orchards, so that the categories reflect uses appropriate for the valuation of such land according to law. Classes shall be inventoried by subclasses of real property based on soil classification standards developed by the Natural Resources Conservation Service of the United States Department of Agriculture as converted into land capability groups by the Property Tax Administrator. County assessors shall utilize soil surveys from the Natural Resources Conservation Service of the United States Department of Agriculture as directed by the Property Tax Administrator. Nothing in this section shall be construed to limit the classes and subclasses of real property that may be used by county assessors or the Tax Equalization and Review Commission to achieve more uniform and proportionate valuations.

Source: Laws 1985, LB 271, § 8; Laws 1988, LB 1207, § 5; Laws 1989, LB 361, § 17; Laws 1991, LB 320, § 9; Laws 1994, LB 902, § 19; Laws 1995, LB 490, § 139; Laws 1997, LB 270, § 81; Laws 1999, LB 403, § 7; Laws 2001, LB 170, § 15; Laws 2004, LB 973, § 30; Laws 2006, LB 808, § 36; Laws 2006, LB 1115, § 31; Laws 2010, LB877, § 3.

77-1371 Comparable sales; use; guidelines.

Comparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value. When using comparable sales in determining actual value of an individual property under the sales comparison approach provided in section 77-112, the following guidelines shall be considered in determining what constitutes a comparable sale:

(1) Whether the sale was financed by the seller and included any special financing considerations or the value of improvements;

(2) Whether zoning affected the sale price of the property;

(3) For sales of agricultural land or horticultural land as defined in section 77-1359, whether a premium was paid to acquire property. A premium may be paid when proximity or tax consequences cause the buyer to pay more than actual value for agricultural land or horticultural land;

(4) Whether sales or transfers made in connection with foreclosure, bankruptcy, or condemnations, in lieu of foreclosure, or in consideration of other legal actions should be excluded from comparable sales analysis as not reflecting current market value;

(5) Whether sales between family members within the third degree of consanguinity include considerations that fail to reflect current market value;

(6) Whether sales to or from federal or state agencies or local political subdivisions reflect current market value;

(7) Whether sales of undivided interests in real property or parcels less than forty acres or sales conveying only a portion of the unit assessed reflect current market value;

(8) Whether sales or transfers of property in exchange for other real estate, stocks, bonds, or other personal property reflect current market value;

(9) Whether deeds recorded for transfers of convenience, transfers of title to cemetery lots, mineral rights, and rights of easement reflect current market value;

(10) Whether sales or transfers of property involving railroads or other public utility corporations reflect current market value;

(11) Whether sales of property substantially improved subsequent to assessment and prior to sale should be adjusted to reflect current market value or eliminated from such analysis;

(12) For agricultural land or horticultural land as defined in section 77-1359 which is or has been receiving the special valuation pursuant to sections 77-1343 to 77-1347.01, whether the sale price reflects a value which the land has for purposes or uses other than as agricultural land or horticultural land and therefor does not reflect current market value of other agricultural land or horticultural land;

(13) Whether sales or transfers of property are in a similar market area and have similar characteristics to the property being assessed; and

(14) For agricultural land and horticultural land as defined in section 77-1359 which is within a class or subclass of irrigated cropland pursuant to section 77-1363, whether the difference in well capacity or in water availability due to federal, state, or local regulatory actions or limited source affected the sale price of the property. If data on current well capacity or current water availability is not available from a federal, state, or local government entity, this subdivision shall not be used to determine what constitutes a comparable sale.

The Property Tax Administrator may issue guidelines for assessing officials for use in determining what constitutes a comparable sale. Guidelines shall take into account the factors listed in this section and other relevant factors as prescribed by the Property Tax Administrator.

Source: Laws 1989, LB 361, § 4; Laws 1995, LB 490, § 142; Laws 2000, LB 968, § 56; Laws 2001, LB 170, § 16; Laws 2003, LB 295, § 3; Laws 2009, LB166, § 13; Laws 2012, LB750, § 2; Laws 2014, LB1098, § 17.

Operative date July 18, 2014.

77-1374 Improvements on leased public lands; assessment; change of ownership; filing required; 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. An assessment application shall also be filed with the county assessor at the time a change of ownership occurs, and

such assessment application shall be signed by the owner of the improvements. 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; Laws 2012, LB1106, § 1.

77-1375 Improvements on leased lands; how assessed; apportionment.

(1) If improvements on leased land are to be assessed separately to the owner of the improvements, the actual value of the real property shall be determined without regard to the fact that the owner of the improvements is not the owner of the land upon which such improvements have been placed.

(2) If the owner of the improvements claims that the value of his or her interest in the real property is reduced by reason of uncertainty in the term of his or her tenancy or because of the prospective termination or expiration of the term, he or she shall serve notice of such claim in writing by mail on the owner of the land before January 1 and shall at the same time serve similar notice on the county assessor, together with his or her affidavit that he or she has served notice on the owner of the land.

(3) If the county assessor finds, on the basis of the evidence submitted, that the claim is valid, he or she shall proceed to apportion the total value of the real property between the owner of the improvements and the owner of the land as their respective interests appear.

(4) The county assessor shall give notice to the parties of his or her findings by mail on or before June 1.

(5) The proportions so established shall continue from year to year unless changed by the county assessor after notice on or before June 1 or a claim is filed by either the owner of the improvements or the owner of the land in accordance with the procedure provided in this section.

Source: Laws 1959, c. 365, § 4, p. 1286; Laws 1979, LB 187, § 199; Laws 1987, LB 508, § 31; R.S.1943, (1990), § 77-1209.02; Laws 1992, LB 1063, § 112; Laws 1992, Second Spec. Sess., LB 1, § 85; Laws 1997, LB 270, § 83; Laws 2012, LB727, § 32.

ARTICLE 15

EQUALIZATION BY COUNTY BOARD

Section

- 77-1501. County board of equalization; who constitutes; meetings; county officials; duties.
- 77-1502. Board; protests; report; notification.
- 77-1504. Equalization of property; board; powers and duties; protest; procedure; notice of decision.
- 77-1504.01. Adjustment to class or subclass of real property; procedure.
- 77-1507. Board; duties; addition of omitted property; clerical errors; protest; procedure.
- 77-1514. Abstract of property assessment rolls; prepared by county assessor; file with Property Tax Administrator.

77-1501 County board of equalization; who constitutes; meetings; county officials; duties.

The county board shall constitute the county board of equalization. The county board of equalization shall fairly and impartially equalize the values of all items of real property in the county so that all real property is assessed uniformly and proportionately.

The county assessor or his or her designee shall attend all meetings of the county board of equalization when such meetings pertain to the assessment or exemption of real and personal property. The county treasurer shall attend all meetings of the county board of equalization involving the exemption of motor vehicles from the motor vehicle tax. All records of the county assessor's office shall be available for the inspection and consideration of the county board of equalization. The county clerk, deputy, or designee pursuant to section 23-1302 shall attend all meetings of the county board of equalization and shall make a record of the proceedings of the county board of equalization.

Source: Laws 1903, c. 73, § 120, p. 428; R.S.1913, § 6436; C.S.1922, § 5971; C.S.1929, § 77-1701; R.S.1943, § 77-1501; Laws 1953, c. 273, § 1, p. 898; Laws 1997, LB 270, § 85; Laws 1999, LB 194, § 23; Laws 2005, LB 762, § 2; Laws 2009, LB166, § 14; Laws 2012, LB801, § 97.

77-1502 Board; protests; report; notification.

(1) The county board of equalization shall meet for the purpose of reviewing and deciding written protests filed pursuant to this section beginning on or after June 1 and ending on or before July 25 of each year. Protests regarding real property shall be signed and filed after the county assessor's completion of the real property assessment roll required by section 77-1315 and on or before June 30. For protests of real property, a protest shall be filed for each parcel. Protests regarding taxable tangible personal property returns filed pursuant to section 77-1229 from January 1 through May 1 shall be signed and filed on or before June 30. The county board in a county with a population of more than one hundred thousand inhabitants based upon the most recent federal decennial census may adopt a resolution to extend the deadline for hearing protests from July 25 to August 10. The resolution must be adopted before July 25 and it will affect the time for hearing protests for that year only. By adopting such resolution, such county waives any right to petition the Tax Equalization and Review Commission for adjustment of a class or subclass of real property under section 77-1504.01 for that year.

(2) Each protest shall be signed and filed with the county clerk of the county where the property is assessed. The protest shall contain or have attached a statement of the reason or reasons why the requested change should be made and a description of the property to which the protest applies. If the property is real property, a description adequate to identify each parcel shall be provided. If the property is tangible personal property, a physical description of the property under protest shall be provided. If the protest does not contain or have attached the statement of the reason or reasons for the protest or the applicable description of the property, the protest shall be dismissed by the county board of equalization.

(3) Beginning January 1, 2014, in counties with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, for a protest regarding real property, each protester shall be afforded the opportunity to meet in person with the county board of equalization or a referee appointed under section 77-1502.01 to provide information relevant to the protested property value.

(4) No hearing of the county board of equalization on a protest filed under this section shall be held before a single commissioner or supervisor.

(5) The county clerk or county assessor shall prepare a separate report on each protest. The report shall include (a) a description adequate to identify the real property or a physical description of the tangible personal property to which the protest applies, (b) any recommendation of the county assessor for action on the protest, (c) if a referee is used, the recommendation of the referee, (d) the date the county board of equalization heard the protest, (e) the decision made by the county board of equalization, (f) the date of the decision, and (g) the date notice of the decision was mailed to the protester. The report shall contain, or have attached to it, a statement, signed by the chairperson of the county board of equalization, describing the basis upon which the board's decision was made. The report shall have attached to it a copy of that portion of the property record file which substantiates calculation of the protested value unless the county assessor certifies to the county board of equalization that a copy is maintained in either electronic or paper form in his or her office. One copy of the report, if prepared by the county clerk, shall be given to the county assessor on or before August 2. The county assessor shall have no authority to make a change in the assessment rolls until there is in his or her possession a report which has been completed in the manner specified in this section. If the county assessor deems a report submitted by the county clerk incomplete, the county assessor shall return the same to the county clerk for proper preparation.

(6) On or before August 2, or on or before August 18 in a county that has adopted a resolution to extend the deadline for hearing protests, the county clerk shall mail to the protester written notice of the board's decision. The notice shall contain a statement advising the protester that a report of the board's decision is available at the county clerk's or county assessor's office, whichever is appropriate.

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, § 77-1502; Laws 1947, c. 251, § 36, p. 826; Laws 1949, c. 233, § 1, p. 644; Laws 1953, c. 274, § 1, p. 899; Laws 1959, c. 355, § 25, p. 1267; Laws 1959, c. 371, § 1, p. 1307; Laws 1961, c. 377, § 6, p. 1158; Laws 1961, c. 384, § 1, p. 1177; Laws 1972, LB 1342, § 1; Laws 1975, LB 312, § 1; Laws 1984, LB 660, § 2; Laws 1986, LB 174, § 1; Laws 1986, LB 817, § 13; Laws 1987, LB 508, § 44; Laws 1992, LB 1063, § 124; Laws 1992, Second Spec. Sess., LB 1, § 97; Laws 1994, LB 902, § 21; Laws 1995, LB 452, § 23; Laws 1995, LB 490, § 147; Laws 1997, LB 270, § 86; Laws 2003, LB 292, § 12; Laws 2004, LB 973, § 33; Laws 2005, LB 283, § 2; Laws 2005, LB 299, § 1; Laws 2006, LB 808, § 37; Laws 2008, LB965, § 15; Laws 2009, LB166, § 15; Laws 2010, LB877, § 4; Laws 2011, LB384, § 14.

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.

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; Laws 2011, LB384, § 15.

77-1504.01 Adjustment to class or subclass of real property; procedure.

(1) Unless the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502, after completion of its actions and based upon the hearings conducted pursuant to sections 77-1502 and 77-1504, a county board of equalization may petition the Tax Equalization and Review Commission to consider an adjustment to a class or subclass of real property

within the county. Petitions must be filed with the commission on or before July 26.

(2) The commission shall hear and take action on a petition filed by a county board of equalization on or before August 10. Hearings held pursuant to this section may be held by means of videoconference or telephone conference. The burden of proof is on the petitioning county to show that failure to make an adjustment would result in values that are not equitable and in accordance with the law. At the hearing the commission may receive testimony from any interested person.

(3) After a hearing the commission shall, within the powers granted in section 77-5023, enter its order based on evidence presented to it at such hearing and the hearings held pursuant to section 77-5022 for that year. The order shall specify the percentage increase or decrease and the class or subclass of real property affected or any corrections or adjustments to be made to the class or subclass of real property affected. When issuing an order to adjust a class or subclass of real property, the commission may exclude individual properties from that order whose value has already been adjusted by a county board of equalization in the same manner as the commission directs in its order. On or before August 10 of each year, the commission shall send its order by certified mail to the county assessor and by regular mail to the county clerk and chairperson of the county board.

(4) The county assessor shall make the specified changes to each item of property in the county as directed by the order of the commission. In implementing such order, the county assessor shall adjust the values of the class or subclass that is the subject of the order. For properties that have already received an adjustment from the county board of equalization, an additional adjustment may be made so that total adjustments made are equal to the commission's ordered adjustment and no additional adjustment shall be made applying the commission's order, but such an exclusion from the commission's order shall not preclude adjustments to those properties for corrections or omissions. The county assessor of the county adjusted by an order of the commission shall recertify the abstract of assessment to the Property Tax Administrator on or before August 20.

Source: Laws 1995, LB 452, § 26; Laws 1997, LB 397, § 22; Laws 1998, LB 306, § 22; Laws 1999, LB 140, § 1; Laws 1999, LB 194, § 26; Laws 2000, LB 968, § 58; Laws 2003, LB 291, § 2; Laws 2004, LB 973, § 34; Laws 2005, LB 283, § 4; Laws 2008, LB965, § 16; Laws 2011, LB384, § 16.

77-1507 Board; duties; addition of omitted property; clerical errors; protest; procedure.

(1) The county board of equalization may meet at any time for the purpose of assessing any omitted real property that was not reported to the county assessor pursuant to section 77-1318.01 and for correction of clerical errors as defined in section 77-128 that result in a change of assessed value. The county board of equalization shall give notice of the assessed value of the real property to the record owner or agent at his or her last-known address. For real property which has been omitted in the current year, the county board of equalization shall not send notice pursuant to this section on or before June 1.

Protests of the assessed value proposed for omitted real property pursuant to this section or a correction for clerical errors shall be filed with the county board of equalization within thirty days after the mailing of the notice. All provisions of section 77-1502 except dates for filing a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section. The county board of equalization shall issue its decision on the protest within thirty days after the filing of the protest.

(2) The county clerk shall, within seven days after the board's final decision, send:

(a) For protested action, a notification to the protester of the board's final action advising the protester that a report of the board's final decision is available at the county clerk's or county assessor's office, whichever is appropriate; and

(b) For protested and nonprotested action, a report to the Property Tax Administrator which shall state a description adequate to identify the property, the reason such property was not assessed pursuant to section 77-1301, and a statement of the board's justification for its action. A copy of the report shall be available for public inspection in the office of the county clerk.

(3) 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 within thirty days after the board's final decision.

(4) Improvements to real property which were properly reported to the county assessor pursuant to section 77-1318.01 for the current year and were not added to the assessment roll by the county assessor on or before March 19 shall only be added to the assessment roll by the county board of equalization from June 1 through July 25, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, such improvements which were not added to the assessment roll on or before March 25 shall only be added to the assessment roll by the county board of equalization from June 1 through July 25. In counties that have adopted a resolution to extend the deadline for hearing protests under section 77-1502, the deadline of July 25 shall be extended to August 10.

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, § 77-1507; Laws 1987, LB 508, § 48; Laws 1995, LB 490, § 150; Laws 1997, LB 270, § 89; Laws 1999, LB 194, § 27; Laws 2005, LB 263, § 14; Laws 2005, LB 283, § 5; Laws 2006, LB 808, § 39; Laws 2010, LB877, § 5; Laws 2011, LB384, § 17.

77-1514 Abstract of property assessment rolls; prepared by county assessor; file with Property Tax Administrator.

The county assessor shall prepare an abstract of the property assessment rolls of locally assessed real property of his or her county on forms prescribed and furnished by the Tax Commissioner. The county assessor shall file the abstract with the Property Tax Administrator on or before March 19, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the

real property abstract shall be filed on or before March 25. The abstract shall show the taxable value of real 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 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. Beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the county assessor shall request an extension of the final filing due date by March 22.

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; Laws 2011, LB162, § 1; Laws 2011, LB384, § 18.

ARTICLE 16 LEVY AND TAX LIST

Section

77-1615. Repealed. Laws 2013, LB 29, § 4.

77-1616. Tax list; delivery to county treasurer; when; warrant for collection.

77-1615 Repealed. Laws 2013, LB 29, § 4.

77-1616 Tax list; delivery to county treasurer; when; warrant for collection.

The tax list shall be completed by the county assessor and delivered to the county treasurer on or before November 22. At the same time the county assessor or county clerk shall transmit a warrant, which warrant shall be signed by the county assessor or county clerk and shall in general terms command the treasurer to collect taxes therein mentioned according to law. No informality therein, and no delay in the transmitting of the same after the time above specified, shall affect the validity of any taxes or sales, or other proceedings for the collection of taxes as provided for in this chapter. Whenever it shall be discovered that the warrant provided for in this section was not at the proper time attached to any tax list, or was not transmitted as herein provided for any preceding year or years, in the hands of the county treasurer, the county assessor shall forthwith attach or transmit such warrant, which shall be in the same form and have the same force and effect as if it had been attached to such tax list, or transmitted as herein provided, before the delivery thereof to the county treasurer.

Source: Laws 1903, c. 73, § 141, p. 438; R.S.1913, § 6461; C.S.1922, § 5984; C.S.1929, § 77-1806; Laws 1943, c. 175, § 4, p. 612; R.S.1943, § 77-1616; Laws 1945, c. 189, § 4, p. 586; Laws 1951,

c. 265, § 1, p. 893; Laws 1969, c. 677, § 1, p. 2602; Laws 1997, LB 269, § 52; Laws 1997, LB 270, § 96; Laws 1998, LB 306, § 29; Laws 2013, LB29, § 1.

ARTICLE 17

COLLECTION OF TAXES

Section

- 77-1704. Collection of taxes; entry of payment; receipt.
 77-1704.01. Collection of taxes; notice; receipt; statement; contents.
 77-1706. Collection of taxes; receipts; how numbered.
 77-1707. Collection of taxes; receipts; accountability of county treasurer.
 77-1710. Collection of taxes; payments; how indicated on tax lists; county treasurer; duties.
 77-1716. Collection of taxes; notice to taxpayer.
 77-1735. Illegal or unconstitutional tax paid; claim for refund; procedure.
 77-1736.06. Property tax refund; procedure.
 77-1759. Collection of taxes; report to and payment of taxes and special assessments; when required.
 77-1780. Tax refund; Tax Commissioner; powers; duties; interest.
 77-1783.01. Corporate taxes; corporate officer or employee; personal liability; collection procedure; limitation.
 77-1784. Electronic filings; electronic fund transfers; required; when; penalty; disclosure to taxpayer.

77-1704 Collection of taxes; entry of payment; receipt.

Whenever any person pays some or all of the taxes charged on any property, the treasurer shall enter such payment in his or her books and may give a receipt therefor specifying for whom paid, the amount paid, what year paid for, and the property and value thereof on which the tax was paid, according to its description in the treasurer's books, in whole or in part of such description as the case may be.

If requested by the payor, the treasurer shall provide a receipt indicating payment. Such entry and receipts shall bear the county name and the name of the treasurer or his or her deputy receiving the payment. Whenever it appears that any receipt for the payment of taxes is lost or destroyed, the entry so made may be read in evidence in lieu thereof. The treasurer shall enter the name of the owner or of the person paying the tax opposite each tract or lot of land when he or she collects the tax thereon and the post office address of the person paying the tax. A statement shall be entered by the treasurer on such receipt showing the amount of unpaid taxes and the date of unredeemed tax sales, if any, for the previous year or years upon such land or town lot. If the treasurer fails or neglects to note on such receipt the unpaid taxes or the date of unredeemed tax sales as provided in this section, he or she shall be liable on his or her bond to the person injured thereby in the amount of the tax so omitted.

Source: Laws 1903, c. 73, § 147, p. 440; R.S.1913, § 6476; C.S.1922, § 5999; C.S.1929, § 77-1904; Laws 1937, c. 167, § 32, p. 660; Laws 1939, c. 98, § 32, p. 447; Laws 1941, c. 157, § 32, p. 631; C.S.Supp.,1941, § 77-1904; R.S.1943, § 77-1704; Laws 1992, LB 1063, § 136; Laws 1992, Second Spec. Sess., LB 1, § 109; Laws 1993, LB 346, § 18; Laws 2000, LB 968, § 61; Laws 2012, LB851, § 1.

77-1704.01 Collection of taxes; notice; receipt; statement; contents.

(1) The county treasurer shall include with each tax notice to every taxpayer and with each receipt provided to a taxpayer the following information:

(a) The total amount of aid from state sources appropriated to the county and each city, village, and school district in the county;

(b) The net amount of property taxes to be levied by the county and each city, village, school district, and learning community in the county; and

(c) For real property, the amount of taxes reflected on the statement that are levied by the county, city, village, school district, learning community, and other subdivisions for the tax year and for the immediately past year on the same parcel.

(2) The necessary form for furnishing the information required by subdivisions (1)(a) and (b) of this section shall be prescribed by the Department of Revenue. The necessary information required by subdivision (1)(a) of this section shall be furnished to the county treasurer by the Department of Revenue prior to October 1 of each year. The form prescribed by the Department of Revenue shall contain the following statement:

THE AMOUNT OF STATE FUNDS SHOWN ABOVE WOULD HAVE BEEN ADDITIONAL PROPERTY TAXES IF NOT ALLOCATED TO THE COUNTY, CITY, VILLAGE, AND SCHOOL DISTRICT BY THE LEGISLATURE.

Source: Laws 1972, LB 674, § 1; Laws 1995, LB 490, § 163; Laws 1997, LB 270, § 98; Laws 1999, LB 881, § 8; Laws 2006, LB 1024, § 9; Laws 2012, LB851, § 2.

77-1706 Collection of taxes; receipts; how numbered.

All receipts issued by the county treasurer for taxes paid to him or her shall be numbered consecutively.

Source: Laws 1903, c. 73, § 149, p. 442; R.S.1913, § 6478; C.S.1922, § 6001; C.S.1929, § 77-1906; Laws 1943, c. 174, § 1(1), p. 607; R.S.1943, § 77-1706; Laws 1945, c. 189, § 6, p. 589; Laws 1993, LB 346, § 19; Laws 1997, LB 269, § 53; Laws 1997, LB 270, § 99; Laws 2003, LB 292, § 13; Laws 2012, LB851, § 3.

77-1707 Collection of taxes; receipts; accountability of county treasurer.

The county treasurer shall be held strictly accountable for all receipts, including receipts found missing at regular settlement, and also for all detached receipts. All irregularities in the issuance of receipts that render them worthless must be shown on the face of the receipt.

Source: Laws 1903, c. 73, § 149, p. 442; R.S.1913, § 6478; C.S.1922, § 6001; C.S.1929, § 77-1906; Laws 1943, c. 174, § 1(2), p. 608; R.S.1943, § 77-1707; Laws 2003, LB 292, § 14; Laws 2012, LB851, § 4.

77-1710 Collection of taxes; payments; how indicated on tax lists; county treasurer; duties.

Whenever any taxes are paid, the county treasurer shall enter on the tax lists, opposite the description of real estate or personal property whereon the same was levied, the word "paid", together with the date of such payment, and the name of the person paying the same, which entry shall be prima facie evidence

of such payment. The county treasurer shall maintain a record of the total tax assessed and monthly total tax collections.

Source: Laws 1903, c. 73, § 152, p. 443; R.S.1913, § 6481; C.S.1922, § 6004; C.S.1929, § 77-1909; R.S.1943, § 77-1710; Laws 2002, LB 994, § 22; Laws 2013, LB29, § 2.

77-1716 Collection of taxes; notice to taxpayer.

The county treasurer shall, at any time prior to January 1 of each year, send a notice to each person on the personal tax roll and each person owing real estate taxes on mobile homes, cabin trailers, manufactured homes, or similar property assessed and taxed as improvements to leased land, advising such taxpayer of the amount of such taxes owed for that year.

Source: Laws 1903, c. 73, § 154, p. 443; R.S.1913, § 6483; C.S.1922, § 6010; C.S.1929, § 77-1915; Laws 1933, c. 136, § 3, p. 518; Laws 1937, c. 167, § 22, p. 654; Laws 1939, c. 98, § 22, p. 441; Laws 1941, c. 157, § 22, p. 625; C.S.Supp.,1941, § 77-1915; Laws 1943, c. 181, § 1, p. 627; R.S.1943, § 77-1716; Laws 1995, LB 452, § 31; Laws 1995, LB 490, § 165; Laws 1998, LB 306, § 30; Laws 2000, LB 968, § 64; Laws 2010, LB873, § 1.

77-1735 Illegal or unconstitutional 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 or unconstitutional 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 or unconstitutional, 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 or unconstitutional 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; Laws 2014, LB558, § 2.
Effective date July 18, 2014.

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, an unprotested determination of a county assessor, an unappealed decision of a county board of equalization, or other final action requiring a refund of real or personal property taxes paid 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, including any school district receiving a distribution pursuant to section 79-1073 or 79-1073.01 and any land bank receiving real property taxes pursuant to subdivision (3)(a) of section 19-5211, 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, including any school district receiving a distribution pursuant to section 79-1073 or 79-1073.01 and any land bank receiving real property taxes pursuant to subdivision (3)(a) of section 19-5211, 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 subdivision 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; Laws 2008, LB965, § 18; Laws 2010, LB1070, § 3; Laws 2013, LB97, § 19.

77-1759 Collection of taxes; report to and payment of taxes and special assessments; when required.

The county treasurer shall report and pay over the amount of tax and special assessments due to towns, districts, cities, villages, all other taxing units, corporations, persons, and land banks, collected by him or her, when demanded by the proper authorities or persons. Upon a demand, one payment shall be for the funds collected or received during the previous calendar month and shall be paid not later than the fifteenth of the following month. A second demand may be made prior to the fifteenth of the month on taxes and special assessments collected or received, during the first fifteen days of the month. The second demand shall be paid not later than the last day of the month.

Source: Laws 1903, c. 73, § 183, p. 456; R.S.1913, § 6511; C.S.1922, § 6039; C.S.1929, § 77-1944; R.S.1943, § 77-1759; Laws 1998, LB 1104, § 11; Laws 1999, LB 287, § 2; Laws 2013, LB97, § 20.

77-1780 Tax refund; Tax Commissioner; powers; duties; interest.

(1) Pursuant to this section, the Tax Commissioner may approve the claim for refund, in whole or in part.

(2) The Tax Commissioner shall grant a hearing prior to taking any action on a claim for a refund if requested in writing by the taxpayer when the claim is filed or prior to any action being taken on the claim.

(3) The Tax Commissioner shall notify the taxpayer in writing of the denial of his or her claim for a refund. The notification shall be made by mail.

(4) Upon approval, the Tax Commissioner shall cause:

(a) A refund to be paid from the fund to which the tax was originally deposited;

(b) A credit to be established against the subsequent tax liability of the taxpayer if the amount of the credit does not exceed twelve times the average monthly tax liability of the taxpayer; or

(c) A credit to be applied to any other existing liability for any other tax collected by the Tax Commissioner.

(5) The payment of the claim for a refund, the allowance of a credit, or the application of the refund to an existing balance, in whole or in part, shall be considered a final decision of the Tax Commissioner for the purposes of the Administrative Procedure Act.

(6) Interest shall be paid from the date of overpayment or the date the tax was required to be paid, whichever is later, until the date the overpayment is refunded, credited, or applied.

(7) Interest shall be paid at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

Source: Laws 1987, LB 523, § 39; Laws 1996, LB 1041, § 4; Laws 2012, LB727, § 33.

Cross References

Administrative Procedure Act, see section 84-920.

77-1783.01 Corporate taxes; corporate officer or employee; personal liability; collection procedure; limitation.

(1) Any officer or employee with the duty to collect, account for, or pay over any taxes imposed upon a corporation or with the authority to decide whether the corporation will pay taxes imposed upon a corporation shall be personally liable for the payment of such taxes in the event of willful failure on his or her part to have a corporation perform such act. Such taxes shall be collected in the same manner as provided under the Uniform State Tax Lien Registration and Enforcement Act.

(2) Within sixty days after the day on which the notice and demand are made for the payment of such taxes, any officer or employee seeking to challenge the Tax Commissioner's determination as to his or her personal liability for the corporation's unpaid taxes may petition for a redetermination. The petition may include a request for the redetermination of the personal liability of the corporate officer or employee, the redetermination of the amount of the corporation's unpaid taxes, or both. If a petition for redetermination is not filed within the sixty-day period, the determination becomes final at the expiration of the period.

(3) If the requirements prescribed in subsection (2) of this section are satisfied, the Tax Commissioner shall abate collection proceedings and shall grant the officer or employee an oral hearing and give him or her ten days' notice of the time and place of such hearing. The Tax Commissioner may continue the hearing from time to time as necessary.

(4) Any notice required under this section shall be served personally or by mail in the manner provided in section 77-27,135.

(5) If the Tax Commissioner determines that further delay in the collection of such taxes from the officer or employee will jeopardize future collection proceedings, nothing in this section shall prevent the immediate collection of such taxes.

(6) No notice or demand for payment may be issued against any officer or employee with the duty to collect, account for, or pay over any taxes imposed upon a corporation or with the authority to decide whether the corporation will pay taxes imposed upon a corporation more than three years after the final determination of the corporation's liability or more than one year after the closure or dismissal of a bankruptcy case in which the corporation appeared as the debtor or debtor in possession if the three-year period to issue a notice or demand for payment had not expired prior to the filing of the petition in bankruptcy, whichever date is later.

(7) For purposes of this section:

(a) Corporation shall mean any corporation and any other entity that is taxed as a corporation under the Internal Revenue Code;

(b) Taxes shall mean all taxes and additions to taxes including interest and penalties imposed under the revenue laws of this state which are administered by the Tax Commissioner; and

(c) Willful failure shall mean that failure which was the result of an intentional, conscious, and voluntary action.

Source: Laws 1996, LB 1041, § 5; Laws 2008, LB914, § 6; Laws 2009, LB165, § 2; Laws 2011, LB210, § 6.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-1784 Electronic filings; electronic fund transfers; required; when; penalty; disclosure to taxpayer.

(1) The Tax Commissioner may accept electronic filing of applications, returns, and any other document required to be filed with the Tax Commissioner.

(2) The Tax Commissioner may use electronic fund transfers to collect any taxes, fees, or other amounts required to be paid to or collected by the Tax Commissioner or to pay any refunds of such amounts.

(3) The Tax Commissioner may adopt rules and regulations to establish the criteria for acceptability of filing documents and making payments electronically. The criteria may include requirements for electronic signatures, the type of tax for which electronic filings or payments will be accepted, the method of transfer, or minimum amounts which may be transferred. The Tax Commissioner may refuse to accept any electronic filings or payments that do not meet the criteria established.

(4) The Tax Commissioner may require the use of electronic fund transfers for any taxes, fees, or amounts required to be paid to or collected by the Tax Commissioner for any taxpayer who made payments exceeding five thousand dollars for a tax program in any prior year for that tax program. The requirement to make electronic fund transfers may be phased in as deemed necessary by the Tax Commissioner. Notice of the requirement to make electronic fund transfers shall be provided at least three months prior to the date the first electronic payment is required to be made.

(5) Except for individual income tax payments required under section 77-2715 and estimated payments for individuals under section 77-2769, any person who fails to make a required payment by electronic fund transfer shall be subject to a penalty of one hundred dollars for each required payment that was not made by electronic fund transfer. The penalty provided by this section shall be in addition to all other penalties and applies even if payment by some other method is timely made. The Tax Commissioner may waive the penalty provided in this section upon a showing of good cause.

(6) The use of electronic filing of documents and electronic fund transfers shall not change the rights of any party from the rights such party would have if a different method of filing or payment were used. Until criteria for electronic signatures are adopted under subsection (3) of this section, the document produced during the electronic filing of a taxpayer's information with the state shall be prima facie evidence for all purposes that the taxpayer's signature accompanied the taxpayer's information in the electronic transmission.

(7) For tax returns due on or after January 1, 2010, the Tax Commissioner may require any person that aids, procures, advises, or assists in the preparation of and files any tax return on behalf of any taxpayer for profit to file an electronic return if the person filed twenty-five or more tax returns in the prior calendar year. The requirement to require electronic filing may be phased in as deemed necessary by the Tax Commissioner.

Any person that files a tax return on behalf of a taxpayer must disclose in writing to the taxpayer that the return will be filed in an electronic format and in accordance with rules and regulations prescribed by the Tax Commissioner.

(8) Any person who fails to file an electronic return as required under subsection (7) of this section shall be subject to a penalty of one hundred dollars

for each return that was not properly filed in addition to other penalties provided by law. The Tax Commissioner may waive the penalty provided in this section upon a showing of good cause.

(9) The Legislature hereby finds and determines that the development of a comprehensive electronic filing and payment system for all state tax programs and fees administered by the Department of Revenue is of critical importance to the State of Nebraska. It is the intent of the Legislature that the department implement a mandatory electronic filing system for all state tax programs and fees administered by the department as deemed practicable and necessary for the proper administration of the Nebraska Revenue Act of 1967. It is the intent of the Legislature that the department require the use of electronic fund transfers for any taxes, fees, or amounts required to be paid to or collected by the department as deemed practicable and necessary for the proper administration of the Nebraska Revenue Act of 1967.

Source: Laws 1987, LB 523, § 42; Laws 1995, LB 134, § 1; Laws 2000, LB 1251, § 1; Laws 2005, LB 216, § 2; Laws 2009, LB165, § 3; Laws 2010, LB879, § 7.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

ARTICLE 18

COLLECTION OF DELINQUENT REAL PROPERTY TAXES BY SALE OF REAL PROPERTY

Section	
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Section

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77-1804 Real property taxes; delinquent tax list; publication and posting of notice; publication charges; publication on Department of Revenue web site.

(1) The county treasurer shall cause the list of real property subject to sale and accompanying notice to be published once a week for three consecutive weeks prior to the date of sale, commencing the first week in February, in a legal newspaper and, in counties having more than two hundred fifty thousand inhabitants, in a daily legal newspaper of general circulation, published in the English language in the county, and designated by the county board. The county treasurer shall also cause to be posted in some conspicuous place in his or her office a copy of such notice. The treasurer shall assess against each description the sum of five dollars to defray the expenses of advertising, which sum shall be added to the total amount due on such real property and be collected in the same manner as taxes are collected.

(2) The county treasurer shall also forward an electronic copy of the list of real property subject to sale to the Property Tax Administrator who shall compile a list for all counties and publish the compiled list on the web site of the Department of Revenue.

Source: Laws 1903, c. 73, § 196, p. 460; R.S.1913, § 6524; Laws 1915, c. 111, § 1, p. 260; Laws 1919, c. 133, § 2, p. 310; C.S.1922, § 6052; Laws 1929, c. 170, § 1, p. 584; C.S.1929, § 77-2004; Laws 1933, c. 136, § 6, p. 519; Laws 1937, c. 167, § 25, p. 656; Laws 1939, c. 98, § 25, p. 443; Laws 1941, c. 157, § 25, p. 627; C.S.Supp.,1941, § 77-2004; R.S.1943, § 77-1804; Laws 1953, c. 279, § 1, p. 910; Laws 1965, c. 495, § 1, p. 1583; Laws 1974, LB 937, § 2; Laws 1976, LB 675, § 1; Laws 1986, LB 531, § 3; Laws 1992, LB 1063, § 141; Laws 1992, Second Spec. Sess., LB 1, § 114; Laws 1995, LB 202, § 2; Laws 2014, LB697, § 1.
Effective date July 18, 2014.

Cross References

For legal rate for publications, see section 33-141.

77-1807 Real property taxes; delinquent tax sale; how conducted; sale of part; bid by land bank; effect.

(1)(a) This subsection applies until January 1, 2015.

(b) Except as otherwise provided in subdivision (c) of this subsection, the person who offers to pay the amount of taxes due on any real property for the smallest portion of the same shall be the purchaser, and when such person designates the smallest portion of the real property for which he or she will pay

the amount of taxes assessed against any such property, the portion thus designated shall be considered an undivided portion.

(c) If a land bank gives an automatically accepted bid for the real property pursuant to section 19-5217, the land bank shall be the purchaser, regardless of the bid of any other person.

(d) If no person bids for a less quantity than the whole and no land bank has given an automatically accepted bid pursuant to section 19-5217, the treasurer may sell any real property to any one who will take the whole and pay the taxes and charges thereon.

(e) If the homestead is listed separately as a homestead, it shall be sold only for the taxes delinquent thereon.

(2)(a) This subsection applies beginning January 1, 2015.

(b) If a land bank gives an automatically accepted bid for real property pursuant to section 19-5217, the land bank shall be the purchaser and no public or private auction shall be held under sections 77-1801 to 77-1863.

(c) If no land bank has given an automatically accepted bid pursuant to section 19-5217, the person who offers to pay the amount of taxes, delinquent interest, and costs due on any real property shall be the purchaser.

(d) The county treasurer shall announce bidding rules at the beginning of the public auction, and such rules shall apply to all bidders throughout the public auction.

(e) The sale, if conducted in a round-robin format, shall be conducted in the following manner:

(i) At the commencement of the sale, a count shall be taken of the number of registered bidders present who want to be eligible to purchase property. Each registered bidder shall only be counted once. If additional registered bidders appear at the sale after the commencement of a round, such registered bidders shall have the opportunity to participate at the end of the next following round, if any, as provided in subdivision (v) of this subdivision;

(ii) Sequentially enumerated tickets shall be placed in a receptacle. The number of tickets in the receptacle for the first round shall equal the count taken in subdivision (i) of this subdivision, and the number of tickets in the receptacle for each subsequent round shall equal the number of the count taken in subdivision (i) of this subdivision plus additional registered bidders as provided in subdivision (v) of this subdivision;

(iii) In a manner determined by the county treasurer, tickets shall be selected from the receptacle by hand for each registered bidder whereby each ticket has an equal chance of being selected. Tickets shall be selected until there are no tickets remaining in the receptacle;

(iv) The number on the ticket selected for a registered bidder shall represent the order in which a registered bidder may purchase property consisting of one parcel subject to sale from the list per round; and

(v) If property listed remains unsold at the end of a round, a new round shall commence until all property listed is either sold or, if any property listed remains unsold, each registered bidder has consecutively passed on the opportunity to make a purchase. Registered bidders who are not present when it is their turn to purchase property shall be considered to have passed on the opportunity to make a purchase. At the beginning of the second and any

subsequent rounds, the county treasurer shall inquire whether there are additional registered bidders. If additional registered bidders are present, tickets for each such bidder shall be placed in a receptacle and selected as provided in subdivisions (ii) through (iv) of this subdivision. The second and any subsequent rounds shall proceed in the same manner and purchase order as the last preceding round, except that any additional registered bidders shall be given the opportunity to purchase at the end of the round in the order designated on their ticket.

(f) Any property remaining unsold upon completion of the public auction shall be sold at a private sale pursuant to section 77-1814.

(g) A bidder shall (i) register with the county treasurer prior to participating in the sale, (ii) provide proof that it maintains a registered agent for service of process with the Secretary of State if the bidder is a foreign corporation, and (iii) pay a twenty-five-dollar registration fee. The fee is not refundable upon redemption.

Source: Laws 1903, c. 73, § 199, p. 461; R.S.1913, § 6527; C.S.1922, § 6055; C.S.1929, § 77-2007; Laws 1937, c. 167, § 11, p. 643; Laws 1939, c. 98, § 11, p. 428; Laws 1941, c. 157, § 11, p. 614; C.S.Supp.,1941, § 77-2007; R.S.1943, § 77-1807; Laws 1992, LB 1063, § 143; Laws 1992, Second Spec. Sess., LB 1, § 116; Laws 2013, LB97, § 21; Laws 2013, LB341, § 1; Laws 2014, LB851, § 9.

Operative date July 18, 2014.

77-1808 Real property taxes; delinquent tax sale; payment by purchaser; resale.

The person purchasing any real property shall pay to the county treasurer the amount of taxes, interest, and cost thereon, which payment may be made in the same funds receivable by law in the payment of taxes. If any purchaser fails to so pay, then the real property shall at once again be offered as if no such sale had been made.

Source: Laws 1903, c. 73, § 200, p. 461; R.S.1913, § 6528; C.S.1922, § 6056; C.S.1929, § 77-2008; Laws 1937, c. 167, § 12, p. 643; Laws 1939, c. 98, § 12, p. 429; Laws 1941, c. 157, § 12, p. 614; C.S.Supp.,1941, § 77-2008; R.S.1943, § 77-1808; Laws 1992, LB 1063, § 144; Laws 1992, Second Spec. Sess., LB 1, § 117; Laws 2013, LB341, § 2.

Operative date January 1, 2015.

77-1809 Real property taxes; delinquent tax sales; purchase by county; assignment of certificate of purchase; interest; notice to land bank.

(1) At all sales provided by law, the county board may purchase for the use and benefit, and in the name of the county, any real estate advertised and offered for sale when the same remains unsold for want of bidders. The county treasurer shall issue certificates of purchase of the real estate so sold in the name of the county. Such certificates shall remain in the custody of the county treasurer, who shall at any time assign the same to any person wishing to buy for the amount expressed on the face of the certificate and interest thereon at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date thereof. Such assignment shall be

attested by the endorsement of the county clerk of his or her name on the back of such certificate, and such endorsement shall be made when requested by the county treasurer.

(2) If real estate is purchased by a county under this section and such real estate lies within a municipality that has created a land bank pursuant to the Nebraska Municipal Land Bank Act, the county treasurer of such county shall notify the land bank of such purchase as soon as practical and shall give the land bank the first opportunity to acquire the certificate of purchase for such real estate from the county.

Source: Laws 1903, c. 73, § 201, p. 462; R.S.1913, § 6529; C.S.1922, § 6057; C.S.1929, § 77-2009; Laws 1937, c. 167, § 34, p. 662; Laws 1939, c. 98, § 34, p. 449; Laws 1941, c. 157, § 34, p. 633; C.S.Supp.,1941, § 77-2009; R.S.1943, § 77-1809; Laws 1971, LB 26, § 1; Laws 1979, LB 84, § 2; Laws 1981, LB 167, § 44; Laws 2013, LB97, § 22.

Cross References

Nebraska Municipal Land Bank Act, see section 19-5201.

77-1810 Real property taxes; delinquent tax sales; purchase by political subdivisions authorized.

(1) Except as otherwise provided in subsection (2) of this section, whenever any real property subject to sale for taxes is within the corporate limits of any city, village, school district, drainage district, or irrigation district, it shall have the right and power through its governing board or body to purchase such real property for the use and benefit and in the name of the city, village, school district, drainage district, or irrigation district as the case may be. The treasurer of the city, village, school district, drainage district, or irrigation district may assign the certificate of purchase by endorsement of his or her name on the back thereof when directed so to do by written order of the governing board.

(2) No such sale shall be made to any city, village, school district, drainage district, or irrigation district by the county treasurer (a) when the real property has been previously sold to the county, but in any such case, the city, village, school district, drainage district, or irrigation district may purchase the tax certificate held by the county or (b) if a land bank has given an automatically accepted bid on such real property pursuant to section 19-5217.

Source: Laws 1903, c. 73, § 202, p. 462; R.S.1913, § 6530; Laws 1917, c. 118, § 1, p. 292; C.S.1922, § 6058; C.S.1929, § 77-2010; Laws 1937, c. 167, § 35, p. 662; Laws 1939, c. 98, § 35, p. 450; Laws 1941, c. 159, § 1, p. 641; Laws 1941, c. 157, § 35, p. 633; C.S.Supp.,1941, § 77-2010; R.S.1943, § 77-1810; Laws 1992, LB 1063, § 145; Laws 1992, Second Spec. Sess., LB 1, § 118; Laws 2013, LB97, § 23.

77-1812 Real property taxes; county treasurer; record.

The county treasurer shall keep a record showing in separate columns the number and date of each certificate of sale, the name of the owners or owner if known, the description of the real property, the name of the purchaser, the total amount of taxes and costs for which sold, the amount of subsequent taxes paid by the purchaser and date of payment, to whom assigned, and the amount paid

therefor, name of person redeeming, date of redemption, total amount paid for redemption, name of person to whom conveyed, and date of deed.

Source: Laws 1903, c. 73, § 204, p. 463; R.S.1913, § 6532; C.S.1922, § 6060; C.S.1929, § 77-2012; R.S.1943, § 77-1812; Laws 1992, LB 1063, § 146; Laws 1992, Second Spec. Sess., LB 1, § 119; Laws 2013, LB341, § 3.
Operative date January 1, 2015.

77-1813 Real property taxes; annual tax sale; return of county treasurer; when made; certified copy as evidence.

On or before the first Monday of April following the sale of the real property, the county treasurer shall file in the office of the county clerk a return thereon as the same shall appear upon the county treasurer's record, and such return, duly certified, shall be evidence of the regularity of the proceedings.

Source: Laws 1903, c. 73, § 205, p. 463; R.S.1913, § 6533; C.S.1922, § 6061; Laws 1933, c. 136, § 7, p. 520; R.S.1943, § 77-1813; Laws 1987, LB 215, § 1; Laws 2013, LB341, § 4.
Operative date January 1, 2015.

77-1818 Real property taxes; certificate of purchase; lien of purchaser; subsequent taxes.

The purchaser of any real property sold by the county treasurer for taxes shall be entitled to a certificate in writing, describing the real property so purchased, the sum paid, and the time when the purchaser will be entitled to a deed, which certificate shall be signed by the county treasurer in his or her official capacity and shall be presumptive evidence of the regularity of all prior proceedings. Each tax lien shall be shown on a single certificate. The purchaser acquires a perpetual lien of the tax on the real property, and if after the taxes become delinquent he or she subsequently pays any taxes levied on the property, whether levied for any year or years previous or subsequent to such sale, he or she shall have the same lien for them and may add them to the amount paid by him or her in the purchase.

Source: Laws 1903, c. 73, § 209, p. 464; R.S.1913, § 6537; C.S.1922, § 6065; C.S.1929, § 77-2017; R.S.1943, § 77-1818; Laws 1992, LB 1063, § 149; Laws 1992, Second Spec. Sess., LB 1, § 122; Laws 2013, LB341, § 5.
Operative date January 1, 2015.

77-1820 Repealed. Laws 2013, LB341, § 22.
Operative date January 1, 2015.

77-1821 Real property taxes; tax receipt; entries.

The treasurer shall make out a tax receipt for the taxes on the real estate mentioned in the certificate, the same as in other cases, and shall write thereon sold for taxes at public sale or sold for taxes at private sale, as the case may be.

Source: Laws 1903, c. 73, § 209, p. 464; R.S.1913, § 6537; C.S.1922, § 6065; C.S.1929, § 77-2017; R.S.1943, § 77-1821; Laws 2012, LB851, § 5.

77-1822 Real property taxes; certificate of purchase; assignable; fee.

The certificate of purchase shall be assignable by endorsement, and an assignment thereof shall vest in the assignee, or his or her legal representatives, all the right and title of the original purchaser. The statement in the treasurer's deed of the fact of the assignment shall be presumptive evidence thereof. An assignment shall be recorded by the county treasurer who shall collect a reassignment fee of twenty dollars and issue a new certificate to the assignee. The fee is not refundable upon redemption.

Source: Laws 1903, c. 73, § 210, p. 465; R.S.1913, § 6538; C.S.1922, § 6066; C.S.1929, § 77-2018; Laws 1937, c. 167, § 37, p. 663; Laws 1939, c. 98, § 37, p. 451; Laws 1941, c. 157, § 37, p. 634; C.S.Supp.,1941, § 77-2018; R.S.1943, § 77-1822; Laws 2002, LB 994, § 24; Laws 2013, LB341, § 6.
Operative date January 1, 2015.

77-1823 Real property taxes; tax certificates and deeds; fees of county treasurer; entry on record of issuance of deed.

The county treasurer shall charge a twenty-dollar issuance fee for each deed or certificate made by him or her for a sale of real property for taxes together with the fee of the notary public or other officer acknowledging the deed. The issuance fee shall not be required if the tax sale certificate is issued in the name of the county, but the issuance fee is due from the purchaser when the county assigns the certificate to another person. The fee is not refundable upon redemption. Whenever the county treasurer makes a deed to any real property sold for taxes, he or she shall enter an account thereof in the record opposite the description of the real property conveyed.

Source: Laws 1903, c. 73, § 211, p. 466; R.S.1913, § 6539; C.S.1922, § 6067; C.S.1929, § 77-2019; R.S.1943, § 77-1823; Laws 1989, LB 324, § 2; Laws 1992, LB 1063, § 151; Laws 1992, Second Spec. Sess., LB 1, § 124; Laws 1995, LB 202, § 3; Laws 2013, LB341, § 7.
Operative date January 1, 2015.

77-1824 Real property taxes; redemption from sale; when and how made.

The owner or occupant of any real property sold for taxes or any person having a lien thereupon or interest therein may redeem the same. The right of redemption expires when the purchaser files an application for tax deed with the county treasurer. A redemption shall not be accepted by the county treasurer, or considered valid, unless received prior to the close of business on the day the application for the tax deed is received by the county treasurer. Redemption shall be accomplished by paying the county treasurer for the use of such purchaser or his or her heirs or assigns the sum mentioned in his or her certificate, with interest thereon at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date of purchase to date of redemption, together with all other taxes subsequently paid, whether for any year or years previous or subsequent to the sale, and interest thereon at the same rate from date of such payment to date of redemption. The amount due for redemption shall include the issuance fee charged pursuant to section 77-1823.

Source: Laws 1903, c. 73, § 212, p. 466; Laws 1905, c. 114, § 1, p. 518; R.S.1913, § 6540; C.S.1922, § 6068; Laws 1923, c. 105, § 1, p.

261; Laws 1925, c. 168, § 1, p. 441; C.S.1929, § 77-2020; Laws 1933, c. 136, § 8, p. 520; Laws 1937, c. 167, § 28, p. 658; Laws 1939, c. 98, § 28, p. 445; Laws 1941, c. 157, § 28, p. 629; C.S.Supp.,1941, § 77-2020; R.S.1943, § 77-1824; Laws 1969, c. 646, § 3, p. 2564; Laws 1979, LB 84, § 3; Laws 1981, LB 167, § 45; Laws 1992, LB 1063, § 152; Laws 1992, Second Spec. Sess., LB 1, § 125; Laws 2012, LB370, § 1; Laws 2013, LB341, § 8.

Operative date January 1, 2015.

77-1824.01 Real property taxes; owner-occupied real property, defined; determination by purchaser; affidavit.

(1) For purposes of sections 77-1801 to 77-1863, owner-occupied real property means real property that is actually occupied by the record owner of the real property, the surviving spouse of the record owner, or a minor child of the record owner on the date of the notice of the application for the tax deed.

(2) The determination of owner-occupied real property shall be made solely by the purchaser. The purchaser's determination shall be proved by affidavit at the time of the application and shall be accepted as true and correct by the county treasurer for his or her determination of statutory compliance with sections 77-1801 to 77-1863. Any person swearing falsely in the affidavit shall be guilty of perjury and upon conviction thereof shall be punished as provided by section 28-915.

Source: Laws 2012, LB370, § 2; Laws 2013, LB341, § 9.

Operative date January 1, 2015.

77-1825 Real property taxes; redemption from sale; entry on record; fee; notice to and payment of redemption money to certificate holder.

The county treasurer shall enter a memorandum of redemption of real property in the record and shall give a receipt therefor to the person redeeming the same, for which the county treasurer may charge a fee of two dollars. The county treasurer shall send written notice of redemption to the holder of the county treasurer's certificate of tax sale by first-class mail if the post office address of the holder of the certificate is filed in the office of the county treasurer or by electronic means if previously agreed to by the parties. The redemption money shall be paid to or upon the order of the holder on return of the certificate.

Source: Laws 1903, c. 73, § 212, p. 466; Laws 1905, c. 114, § 1, p. 518; R.S.1913, § 6540; C.S.1922, § 6068; Laws 1923, c. 105, § 1, p. 261; Laws 1925, c. 168, § 1, p. 441; C.S.1929, § 77-2020; Laws 1933, c. 136, § 8, p. 520; Laws 1937, c. 167, § 28, p. 658; Laws 1939, c. 98, § 28, p. 445; Laws 1941, c. 157, § 28, p. 629; C.S.Supp.,1941, § 77-2020; R.S.1943, § 77-1825; Laws 1967, c. 503, § 2, p. 1700; Laws 1989, LB 324, § 3; Laws 2012, LB370, § 3; Laws 2013, LB341, § 10.

Operative date January 1, 2015.

77-1827 Real property taxes; redemption; persons with intellectual disability or mental disorder; time permitted.

The real property of persons with an intellectual disability or a mental disorder so sold, or any interest they may have in real property sold for taxes, may be redeemed at any time within five years after such sale.

Source: Laws 1903, c. 73, § 212, p. 466; Laws 1905, c. 114, § 1, p. 518; R.S.1913, § 6540; C.S.1922, § 6068; Laws 1923, c. 105, § 1, p. 261; Laws 1925, c. 168, § 1, p. 441; C.S.1929, § 77-2020; Laws 1933, c. 136, § 8, p. 520; Laws 1937, c. 167, § 28, p. 658; Laws 1939, c. 98, § 28, p. 445; Laws 1941, c. 157, § 28, p. 629; C.S.Supp.,1941, § 77-2020; R.S.1943, § 77-1827; Laws 1986, LB 1177, § 34; Laws 1992, LB 1063, § 154; Laws 1992, Second Spec. Sess., LB 1, § 127; Laws 2013, LB23, § 42.

77-1830 Real property taxes; redemption from sale; part interest in land; how made.

Any person claiming an undivided part of any real property sold for taxes may redeem the property on paying such proportion of the purchase money, interest, costs, and subsequent taxes as he or she claims of the real property sold. The owner or occupant of a divided part of any real property sold for taxes or any person having a lien thereon or interest therein may redeem the property by paying the taxes separately assessed against such divided part, together with interest, costs, and subsequent taxes. If no taxes have been separately assessed against such divided part, then it shall be the duty of the county assessor, upon demand of the owner or lienholder or upon the demand of the county treasurer, to assess the divided part and to certify the assessment to the county treasurer. The owner or lienholder of the divided part may thereupon redeem the divided part upon the payment to the county treasurer of such sum so assessed, together with interest thereon, costs, and subsequent taxes. The county treasurer shall make a proper entry of such partial redemption in his or her record, and no deed thereafter given shall convey a greater interest than that remaining unredeemed.

Source: Laws 1903, c. 73, § 213, p. 466; R.S.1913, § 6541; C.S.1922, § 6069; Laws 1925, c. 168, § 2, p. 442; C.S.1929, § 77-2021; Laws 1937, c. 167, § 29, p. 659; Laws 1939, c. 98, § 29, p. 446; Laws 1941, c. 157, § 29, p. 629; C.S.Supp.,1941, § 77-2021; R.S.1943, § 77-1830; Laws 1992, LB 1063, § 156; Laws 1992, Second Spec. Sess., LB 1, § 129; Laws 2013, LB341, § 11. Operative date January 1, 2015.

77-1831 Real property taxes; issuance of treasurer's tax deed; notice given by purchaser; contents.

Except as otherwise provided in this section, no purchaser at any sale for taxes or his or her assignees shall be entitled to a tax deed from the county treasurer for the real property so purchased unless such purchaser or assignee, at least three months before applying for the tax deed, serves or causes to be served a notice that states, after the expiration of at least three months from the date of service of such notice, the tax deed will be applied for. In the case of owner-occupied property, no purchaser at any sale for taxes or his or her assignees shall be entitled to a tax deed from the county treasurer for the real property so purchased unless such purchaser or assignee, at least three months and forty-five days before applying for the tax deed, serves or causes to be

served a notice that states, after the expiration of at least three months and forty-five days from the date of service of such notice, the tax deed will be applied for.

The notice shall include:

(1) The following statement in sixteen-point type: UNLESS YOU ACT YOU WILL LOSE THIS PROPERTY;

(2) The date when the purchaser purchased the real property sold by the county for taxes;

(3) The description of the real property;

(4) In whose name the real property was assessed;

(5) The amount of taxes represented by the tax sale certificate, the year the taxes were levied or assessed, and a statement that subsequent taxes may have been paid and interest may have accrued as of the date the notice is signed by the purchaser; and

(6) The following statements:

(a) That the issuance of a tax deed is subject to the right of redemption under sections 77-1824 to 77-1830;

(b) The right of redemption requires payment to the county treasurer, for the use of such purchaser, or his or her heirs or assigns, the amount of taxes represented by the tax sale certificate for the year the taxes were levied or assessed and any subsequent taxes paid and interest accrued as of the date payment is made to the county treasurer; and

(c) Except as provided for real property that is actually occupied by the record owner of the real property, the surviving spouse of the record owner, or a minor child of the record owner, right of redemption expires at the close of business on the date of application for the tax deed, and a deed may be applied for after the expiration of three months from the date of service of this notice. For real property that is actually occupied by the record owner of the real property, the surviving spouse of the record owner, or a minor child of the record owner, a deed may be applied for after the expiration of three months and forty-five days after the service of this notice.

Source: Laws 1903, c. 73, § 214, p. 467; Laws 1905, c. 115, § 1, p. 520; R.S.1913, § 6542; Laws 1921, c. 143, § 1, p. 610; C.S.1922, § 6070; C.S.1929, § 77-2022; R.S.1943, § 77-1831; Laws 1992, LB 1063, § 157; Laws 1992, Second Spec. Sess., LB 1, § 130; Laws 2012, LB370, § 4; Laws 2013, LB341, § 12.
Operative date January 1, 2015.

77-1832 Real property taxes; issuance of treasurer's tax deed; service of notice; upon whom made.

(1) Service of the notice provided by section 77-1831 shall be made by:

(a) Personal or residence service as described in section 25-505.01 upon every person in actual possession or occupancy of the real property who qualifies as an owner-occupant under section 77-1824.01; or

(b) Certified mail, return receipt requested, upon the person in whose name the title to the real property appears of record to the address where the property tax statement was mailed and upon every encumbrancer of record in the office of the register of deeds of the county. Whenever the record of a lien

shows the post office address of the lienholder, notice shall be sent by certified mail, return receipt requested, to the holder of such lien at the address appearing of record.

(2) Personal or residence service shall be made by the county sheriff of the county where service is made or by a person authorized by section 25-507. The sheriff or other person serving the notice shall be entitled to the statutory fee prescribed in section 33-117. Within twenty days after the date of request for service of the notice, the person serving the notice of service shall (a) make proof of service to the person requesting the service and state the time and place of service including the address if applicable, the name of the person with whom the notice was left, and the method of service or (b) return the proof of service with a statement of the reason for the failure to serve. Failure to make proof of service or delay in doing so does not affect the validity of the service.

Source: Laws 1903, c. 73, § 214, p. 467; Laws 1905, c. 115, § 1, p. 520; R.S.1913, § 6542; Laws 1921, c. 143, § 1, p. 610; C.S.1922, § 6070; C.S.1929, § 77-2022; R.S.1943, § 77-1832; Laws 1987, LB 93, § 20; Laws 1992, LB 1063, § 158; Laws 1992, Second Spec. Sess., LB 1, § 131; Laws 2003, LB 319, § 1; Laws 2012, LB370, § 5; Laws 2013, LB341, § 13.

Operative date January 1, 2015.

77-1833 Real property taxes; issuance of treasurer's tax deed; proof of service; fees.

The service of notice provided by section 77-1832 shall be proved by affidavit, and the notice and affidavit shall be filed and preserved in the office of the county treasurer. The purchaser or assignee shall also affirm in the affidavit that a title search was conducted to determine those persons entitled to notice pursuant to such section. The certified mail return receipt shall be filed with and accompany the return of service. The affidavit shall be filed with the application for the tax deed pursuant to section 77-1837. For each service of such notice, a fee of one dollar shall be allowed. The amount of such fees shall be noted by the county treasurer in the record opposite the real property described in the notice and shall be collected by the county treasurer in case of redemption for the benefit of the holder of the certificate.

Source: Laws 1903, c. 73, § 214, p. 467; Laws 1905, c. 115, § 1, p. 520; R.S.1913, § 6542; Laws 1921, c. 143, § 1, p. 610; C.S.1922, § 6070; C.S.1929, § 77-2022; R.S.1943, § 77-1833; Laws 1969, c. 645, § 9, p. 2561; Laws 1992, LB 1063, § 159; Laws 1992, Second Spec. Sess., LB 1, § 132; Laws 2003, LB 319, § 2; Laws 2012, LB370, § 6; Laws 2013, LB341, § 14.

Operative date January 1, 2015.

77-1834 Real property taxes; issuance of treasurer's tax deed; notice to owner or encumbrancer by publication.

If the person in whose name the title to the real property appears of record in the office of the register of deeds in the county or if the encumbrancer in whose name an encumbrance on the real property appears of record in the office of the register of deeds in the county cannot, upon diligent inquiry, be found, the purchaser or his or her assignee shall publish the notice in some newspaper published in the county and having a general circulation in the county or, if no

newspaper is printed in the county, then in a newspaper published in this state nearest to the county in which the real property is situated.

Source: Laws 1903, c. 73, § 215, p. 467; R.S.1913, § 6543; C.S.1922, § 6071; C.S.1929, § 77-2023; R.S.1943, § 77-1834; Laws 1992, LB 1063, § 160; Laws 1992, Second Spec. Sess., LB 1, § 133; Laws 2003, LB 319, § 3; Laws 2008, LB893, § 1; Laws 2012, LB370, § 7.

77-1835 Real property taxes; issuance of treasurer's tax deed; manner and proof of publication; false affidavit; penalty.

The notice provided by section 77-1834 shall be inserted three consecutive weeks, the last time not less than three months before applying for the tax deed. Proof of publication shall be made by filing in the county treasurer's office the affidavit of the publisher, manager, or other employee of such newspaper, that to his or her personal knowledge, the notice was published for the time and in the manner provided in this section, setting out a copy of the notice and the date upon which the same was published. The purchaser or assignee shall also file an affidavit in the office that a title search was conducted to determine those persons entitled to notice pursuant to such section. The affidavits shall be filed with the application for the tax deed pursuant to section 77-1837. The affidavits shall be preserved as a part of the files of the office. Any publisher, manager, or employee of a newspaper knowingly or negligently making a false affidavit regarding any such matters shall be guilty of perjury and shall be punished accordingly. Section 25-520.01 does not apply to publication of notice pursuant to section 77-1834.

Source: Laws 1903, c. 73, § 215, p. 467; R.S.1913, § 6543; C.S.1922, § 6071; C.S.1929, § 77-2023; R.S.1943, § 77-1835; Laws 2012, LB370, § 8.

Cross References

Perjury, see section 28-915.

77-1836 Real property taxes; issuance of treasurer's tax deed; fee.

If any person is compelled to publish notice in a newspaper as provided in sections 77-1834 and 77-1835, then before any person who may have a right to redeem such real property from such sale is permitted to redeem, he or she shall pay the officer or person who by law is authorized to receive such redemption money the amount paid for publishing such notice, for the use of the person compelled to publish the notice. The fee for such publication shall not exceed five dollars for each item of real property contained in such notice. The cost of making such publication shall be noted by the county treasurer in the record opposite the real property described in the notice.

Source: Laws 1903, c. 73, § 216, p. 468; R.S.1913, § 6544; C.S.1922, § 6072; C.S.1929, § 77-2024; R.S.1943, § 77-1836; Laws 1992, LB 1063, § 161; Laws 1992, Second Spec. Sess., LB 1, § 134; Laws 2002, LB 994, § 25; Laws 2013, LB341, § 15.
Operative date January 1, 2015.

77-1837 Real property taxes; issuance of treasurer's tax deed; when.

At any time within nine months after the expiration of three years after the date of sale of any real estate for taxes or special assessments, if such real estate has not been redeemed, the county treasurer, on application, on production of the certificate of purchase, and upon compliance with sections 77-1801 to 77-1863, shall execute and deliver a deed of conveyance for the real estate described in such certificate as provided in this section. The failure of the county treasurer to issue the deed of conveyance if requested within the timeframe provided in this section shall not impair the validity of such deed if there has otherwise been compliance with sections 77-1801 to 77-1863.

Source: Laws 1903, c. 73, § 217, p. 468; R.S.1913, § 6545; C.S.1922, § 6073; C.S.1929, § 77-2025; R.S.1943, § 77-1837; Laws 1975, LB 78, § 1; Laws 1987, LB 215, § 2; Laws 2001, LB 118, § 1; Laws 2012, LB370, § 9; Laws 2013, LB341, § 16.
Operative date January 1, 2015.

77-1837.01 Real property taxes; tax deed proceedings; changes in law not retroactive; laws governing.

(1) Except as otherwise provided in subsection (2) of this section, the laws in effect on the date of the issuance of a tax sale certificate govern all matters related to tax deed proceedings, including noticing and application, and foreclosure proceedings. Changes in law shall not apply retroactively with regard to the tax sale certificates previously issued.

(2) Tax sale certificates sold and issued between January 1, 2010, and December 31, 2014, shall be governed by the laws and statutes that were in effect on December 31, 2009, with regard to all matters relating to tax deed proceedings, including noticing and application, and foreclosure proceedings.

Source: Laws 2012, LB370, § 10; Laws 2014, LB851, § 10.
Operative date July 18, 2014.

77-1849 Real property taxes; erroneous sale; refund of purchase money.

Whenever it shall be made to appear to the satisfaction of the county treasurer, either before the execution of a deed for real property sold for taxes, or, if a deed is returned by the purchaser, that any tract or lot has been sold which was not subject to taxation, or upon which the taxes had been paid previous to the sale, he or she shall make an entry opposite such tract or lot on the record that the same was erroneously sold, and such entry shall be evidence of the fact therein stated. In such cases the purchase money shall be refunded to the purchaser.

Source: Laws 1903, c. 73, § 224, p. 473; R.S.1913, § 6552; C.S.1922, § 6080; C.S.1929, § 77-2032; R.S.1943, § 77-1849; Laws 2013, LB341, § 17.
Operative date January 1, 2015.

ARTICLE 19

**COLLECTION OF DELINQUENT REAL ESTATE
TAXES THROUGH COURT PROCEEDINGS**

Section

- 77-1901. Tax liens; delinquency; order of county board directing foreclosure.
77-1902. Tax sale certificate; tax deed; right of holder to foreclosure; action in district court; limitation period.

Section

- 77-1909. Foreclosure proceedings; decree; contents; attorney's fee.
 77-1912. Foreclosure proceedings; sheriff's sale; political subdivision as purchaser; postponement of sale; notice.
 77-1914. Foreclosure proceedings; confirmation of sale; release of real property.
 77-1915. Foreclosure proceedings; proceeds of sale; disposition.
 77-1916. Foreclosure proceedings; surplus proceeds; disposition; prorating.
 77-1926. Repealed. Laws 2013, LB341, § 22.
 77-1936. Tax certificate foreclosure proceedings; authority of governmental subdivisions to convey real property obtained thereunder.
 77-1937. Repealed. Laws 2013, LB341, § 22.

77-1901 Tax liens; delinquency; order of county board directing foreclosure.

Counties shall have a lien upon real estate within their boundaries for all taxes due thereon to the state, any governmental subdivision of the state, any municipal corporation, and any drainage or irrigation district. After any parcel of real estate has been offered for sale and not sold for want of bidders, the county board shall make and enter an order directing the county attorney to foreclose the lien for all taxes then delinquent, excluding any lien on real estate for special assessments levied by any sanitary and improvement district which special assessments have not been previously offered for sale by the county treasurer, in the same manner and with like effect as in the foreclosure of real estate mortgages, except as otherwise specifically provided by sections 77-1903 to 77-1917.

Source: Laws 1943, c. 176, § 1, p. 614; R.S.1943, § 77-1901; Laws 1965, c. 496, § 1, p. 1584; Laws 1979, LB 84, § 4; Laws 1996, LB 1321, § 3; Laws 2011, LB423, § 1.

77-1902 Tax sale certificate; tax deed; right of holder to foreclosure; action in district court; limitation period.

When land has been sold for delinquent taxes and a tax sale certificate or tax deed has been issued, the holder of such tax sale certificate or tax deed may, instead of demanding a deed or, if a deed has been issued, by surrendering the same in court, proceed in the district court of the county in which the land is situated to foreclose the lien for taxes represented by the tax sale certificate or tax deed and all subsequent tax liens thereon, excluding any lien on real estate for special assessments levied by any sanitary and improvement district which special assessments have not been previously offered for sale by the county treasurer, in the same manner and with like effect as in the foreclosure of a real estate mortgage, except as otherwise specifically provided by sections 77-1903 to 77-1917. Such action shall only be brought within nine months after the expiration of three years from the date of sale of any real estate for taxes or special assessments.

Source: Laws 1943, c. 176, § 2, p. 615; R.S.1943, § 77-1902; Laws 1975, LB 78, § 2; Laws 1987, LB 215, § 3; Laws 1996, LB 1321, § 4; Laws 2011, LB423, § 2; Laws 2013, LB341, § 18.
 Operative date January 1, 2015.

77-1909 Foreclosure proceedings; decree; contents; attorney's fee.

In its decree, the court shall ascertain and determine the amount of taxes, special assessments, and other liens, interest, and costs chargeable to each particular item of real property, excluding any lien on real estate for special

assessments levied by any sanitary and improvement district which special assessments have not been previously offered for sale by the county treasurer, and award to the plaintiff an attorney's fee, unless waived by the plaintiff, in an amount equal to ten percent of the amount due which shall be taxed as part of the costs in the action and apportioned equitably as other costs.

Source: Laws 1943, c. 176, § 9, p. 616; R.S.1943, § 77-1909; Laws 1992, LB 1063, § 171; Laws 1992, Second Spec. Sess., LB 1, § 144; Laws 2011, LB423, § 3.

77-1912 Foreclosure proceedings; sheriff's sale; political subdivision as purchaser; postponement of sale; notice.

(1) The sheriff shall sell the real property in the same manner provided by law for a sale on execution and shall at once pay the proceeds thereof to the clerk of the district court. Any governmental subdivision of the state, municipal corporation, or drainage or irrigation district to which any part of the taxes included in the decree of foreclosure is due may purchase any real property sold at sheriff's sale. The provisions of the law for the protection of the purchasers at tax sales shall apply to purchasers at foreclosure sales provided for in this section. The sheriff or officer conducting the sale shall not be entitled to any commission on the money received and paid out on foreclosure sales provided for herein.

(2) The sheriff or officer conducting the sale may, for any cause he or she deems expedient, postpone the sale of all or any portion of the real property from time to time until it is completed, and in every such case, notice of postponement shall be given by public declaration thereof by the sheriff or officer at the time and place last appointed for the sale. The public declaration of the notice of postponement shall include the new date, time, and place of sale. No other notice of the postponed sale need be given unless the sale is postponed for longer than forty-five days beyond the day designated in the notice of sale, in which event notice shall be given in the same manner as the original notice of sale is required to be given.

Source: Laws 1943, c. 176, § 12, p. 617; R.S.1943, § 77-1912; Laws 1992, LB 1063, § 174; Laws 1992, Second Spec. Sess., LB 1, § 147; Laws 2010, LB732, § 5.

77-1914 Foreclosure proceedings; confirmation of sale; release of real property.

Upon confirmation of the sale, the clerk of the district court shall certify to the county treasurer the year or years of the taxes for which the real property was sold. The county treasurer shall thereupon cancel the taxes for such years, and the proceedings shall operate as a release of such real property from all liens for the taxes included on the real property. The delivery of the sheriff's deed shall pass title to the purchaser free and clear of all liens and interests of all persons who were parties to the proceedings, who received service of process, and over whom the court had jurisdiction, excluding any lien on real estate for special assessments levied by any sanitary and improvement district which special assessments have not been previously offered for sale by the county treasurer.

Source: Laws 1943, c. 176, § 14, p. 618; R.S.1943, § 77-1914; Laws 1992, LB 1063, § 175; Laws 1992, Second Spec. Sess., LB 1, § 148; Laws 2008, LB893, § 2; Laws 2011, LB423, § 4.

77-1915 Foreclosure proceedings; proceeds of sale; disposition.

From the proceeds of the sale of any real property, the costs charged thereto shall first be paid. When the plaintiff is a private person, firm, or corporation, the balance thereof, or so much thereof as is necessary, shall be paid to the plaintiff. When the plaintiff is a governmental subdivision other than a land bank, or is a municipal corporation or drainage or irrigation district, the balance thereof, or so much thereof as is necessary, shall be paid to the county treasurer for distribution to the various governmental subdivisions, municipal corporations, or drainage or irrigation districts entitled thereto in discharge of all claims, excluding any lien on real estate for special assessments levied by any sanitary and improvement district which special assessments have not been previously offered for sale by the county treasurer. When the plaintiff is a land bank, the balance thereof, or so much thereof as is necessary, shall be paid to the land bank.

Source: Laws 1943, c. 176, § 15, p. 618; R.S.1943, § 77-1915; Laws 1992, LB 1063, § 176; Laws 1992, Second Spec. Sess., LB 1, § 149; Laws 2011, LB423, § 5; Laws 2013, LB97, § 24.

77-1916 Foreclosure proceedings; surplus proceeds; disposition; prorating.

If a surplus remains after satisfying all costs and taxes against any particular item of real property, the excess shall be applied in the manner provided by law for the disposition of the surplus in the foreclosure of mortgages on real property. If the proceeds are insufficient to pay the costs and all the taxes, when the plaintiff is a governmental subdivision other than a land bank or is a municipal corporation or a drainage or irrigation district, the amount remaining shall be prorated among the governmental subdivisions, municipal corporations, and drainage or irrigation districts in the proportion of their interest in the decree of foreclosure. The proceeds of the sale of one item of real property shall not be applied to the discharge of a lien for taxes against another item of real property except when so directed by the decree for foreclosure under the circumstances set forth in section 77-1910. The lien on real estate for special assessments levied by any sanitary and improvement district shall not be entitled to any surplus unless such special assessments have been previously offered for sale by the county treasurer.

Source: Laws 1943, c. 176, § 16, p. 618; R.S.1943, § 77-1916; Laws 1992, LB 1063, § 177; Laws 1992, Second Spec. Sess., LB 1, § 150; Laws 2011, LB423, § 6; Laws 2013, LB97, § 25.

77-1926 Repealed. Laws 2013, LB341, § 22.

Operative date January 1, 2015.

77-1936 Tax certificate foreclosure proceedings; authority of governmental subdivisions to convey real property obtained thereunder.

When any county, city, village, school district, drainage district, or irrigation district shall have acquired real estate under such tax foreclosure proceedings, the governing body of such governmental subdivision or municipal corporation shall have power to convey any such real estate by a deed signed by the chairperson or other presiding officer of such body, subject to the right, if any, of any person, persons, firm, corporation, or governmental body to attack the same by action or proceeding within the one-year limitation provided in

sections 77-1934 to 77-1936, for such price as the governing body of any such governmental subdivision or municipal corporation, in the exercise of good faith, shall determine to be a fair and reasonable price for the property.

Source: Laws 1947, c. 264, § 4, p. 856; Laws 2013, LB341, § 19.
Operative date January 1, 2015.

77-1937 Repealed. Laws 2013, LB341, § 22.
Operative date January 1, 2015.

ARTICLE 22 WARRANTS

Section

77-2215. Lost warrants; replacement issued; conditions; stop-payment order.

77-2215 Lost warrants; replacement issued; conditions; stop-payment order.

(1) Whenever it shall be made to appear to the satisfaction of any officer, except the Director of Administrative Services, authorized by law to issue warrants, that any warrant issued by him or her has been lost or destroyed, such officer shall have authority to issue a replacement thereof. No replacement warrant shall be issued until the party applying for the same shall make an affidavit that such party was the owner of the original warrant and shall also file with such officer an indemnity bond with good and sufficient security, conditioned to refund any money received by the party or his or her assigns on such replacement in case of presentation and payment of the original by the treasurer upon whom the same is drawn, whether upon a genuine endorsement thereon or otherwise. The payee of any lost or destroyed warrant shall not be required to file an indemnity bond when the affidavit shows that such payee has not received such lost or destroyed warrant and cannot reasonably expect to receive it.

(2) Whenever it shall have come to the attention of the Director of Administrative Services that an outstanding warrant has not been presented for payment, the Director of Administrative Services shall immediately issue a stop-payment order and notify the State Treasurer of the issuance of such order. After the expiration of seven working days from the issuance of such order, if in the meantime such outstanding warrant has not been presented for payment, the Director of Administrative Services shall have authority to issue a replacement thereof. In an emergency, the Director of Administrative Services may immediately issue such replacement warrant.

Source: Laws 1875, § 1, p. 176; R.S.1913, § 6654; C.S.1922, § 6185; C.S.1929, § 77-2413; R.S.1943, § 77-2215; Laws 1951, c. 208, § 1, p. 769; Laws 1957, c. 338, § 1, p. 1175; Laws 1977, LB 137, § 1; Laws 1986, LB 930, § 1; Laws 2014, LB974, § 2.
Effective date April 3, 2014.

ARTICLE 23 DEPOSIT AND INVESTMENT OF PUBLIC FUNDS

(a) GENERAL PROVISIONS

Section

77-2318. County funds; depositories; limitation on deposits; exception.

Section

- 77-2320. County funds; depositories; security in lieu of bond.
 77-2365.02. Funds of state or political subdivisions; investment or deposit in interest-bearing deposits; conditions.
 (b) PUBLIC FUNDS DEPOSIT SECURITY ACT
 77-2387. Terms, defined.
 77-2398. Deposits in excess of insured or guaranteed amount; requirements.

(a) GENERAL PROVISIONS

77-2318 County funds; depositories; limitation on deposits; exception.

The county treasurer shall not have on deposit in any bank, capital stock financial institution, or qualifying mutual financial institution at any time more money than the amount insured or guaranteed by the Federal Deposit Insurance Corporation, plus the maximum amount of the bond given by such bank, capital stock financial institution, or qualifying mutual financial institution in cases when the bank, capital stock financial institution, or qualifying mutual financial institution gives a guaranty bond except as provided in section 77-2318.01. The amount on deposit at any time with any bank, capital stock financial institution, or qualifying mutual financial institution shall not exceed fifty percent of the capital and surplus of such bank, capital stock financial institution, or qualifying mutual financial institution except as provided in section 77-2318.01. When the amount of money which the county treasurer desires to deposit in the banks, capital stock financial institutions, and qualifying mutual financial institutions within the county exceeds fifty percent of the capital and surplus of all of the banks, capital stock financial institutions, and qualifying mutual financial institutions in such county, then the county treasurer may, with the consent of the county board, deposit an amount in excess thereof, but not exceeding the capital stock and surplus in any one bank, capital stock financial institution, or qualifying mutual financial institution unless the depository gives security as provided in section 77-2318.01. Bond shall be required of all banks, capital stock financial institutions, and qualifying mutual financial institutions for such excess deposit unless security is given in accordance with section 77-2318.01. The bonds shall be deposited with the county treasurer and approved by the county board. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1891, c. 50, § 8, p. 352; Laws 1897, c. 23, § 5, p. 191; Laws 1903, c. 110, § 2, p. 585; Laws 1909, c. 35, § 1, p. 216; R.S.1913, § 6662; C.S.1922, § 6193; Laws 1925, c. 96, § 1, p. 279; Laws 1927, c. 34, § 2, p. 156; Laws 1929, c. 36, § 1, p. 151; C.S.1929, § 77-2508; Laws 1935, c. 152, § 4, p. 563; Laws 1939, c. 103, § 3, p. 464; C.S.Supp.,1941, § 77-2508; R.S.1943, § 77-2318; Laws 1953, c. 284, § 1, p. 921; Laws 1989, LB 33, § 36; Laws 1992, LB 757, § 26; Laws 1996, LB 1274, § 30; Laws 2001, LB 362, § 38; Laws 2009, LB259, § 15; Laws 2011, LB396, § 1.

77-2320 County funds; depositories; security in lieu of bond.

In lieu of a bond as provided in sections 77-2316 to 77-2319, any bank, capital stock financial institution, or qualifying mutual financial institution making application to become a depository under sections 77-2312 to 77-2324 may give security as provided in the Public Funds Deposit Security Act to the

county treasurer. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1909, c. 35, § 1, p. 216; R.S.1913, § 6662; C.S.1922, § 6193; Laws 1925, c. 96, § 1, p. 279; Laws 1927, c. 34, § 2, p. 156; Laws 1929, c. 36, § 1, p. 151; C.S.1929, § 77-2508; Laws 1935, c. 152, § 4, p. 563; Laws 1939, c. 103, § 3, p. 464; C.S.Supp.,1941, § 77-2508; R.S.1943, § 77-2320; Laws 1959, c. 263, § 15, p. 945; Laws 1977, LB 266, § 2; Laws 1988, LB 703, § 3; Laws 1989, LB 33, § 39; Laws 1989, LB 377, § 13; Laws 1996, LB 1274, § 32; Laws 2001, LB 362, § 41; Laws 2012, LB879, § 1.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

77-2365.02 Funds of state or political subdivisions; investment or deposit in interest-bearing deposits; conditions.

Notwithstanding any other provision of law, to the extent that the funds of this state or any political subdivision of this state may be invested or deposited, by the appropriate custodian of such funds, in interest-bearing deposits with banks, capital stock financial institutions, or qualifying mutual financial institutions, such authorization may include the investment or deposit of funds in interest-bearing deposits in accordance with the following conditions as an alternative to the furnishing of securities or the providing of a deposit guaranty bond pursuant to the Public Funds Deposit Security Act:

(1) The bank, capital stock financial institution, or qualifying mutual financial institution in this state through which the investment or deposit of funds is initially made arranges for the deposit of a portion or all of such funds in interest-bearing deposits with other banks, capital stock financial institutions, or qualifying mutual financial institutions located in the United States;

(2) Each such interest-bearing deposit is fully insured or guaranteed by the Federal Deposit Insurance Corporation;

(3) The bank, capital stock financial institution, or qualifying mutual financial institution through which the investment or deposit of funds was initially made acts as a custodian for the state or political subdivision with respect to any such interest-bearing deposit issued for the account of the state or political subdivision; and

(4) At the same time that the funds are deposited into other banks, capital stock financial institutions, or qualifying mutual financial institutions, the bank, capital stock financial institution, or qualifying mutual financial institution through which the investment or deposit of funds in interest-bearing deposits was initially made receives an amount of deposits from customers of other banks, capital stock financial institutions, or qualifying mutual financial institutions located in the United States which is equal to or greater than the amount of the investment or deposit of funds in interest-bearing deposits initially made by the state or political subdivision.

Source: Laws 2004, LB 999, § 51; Laws 2009, LB259, § 23; Laws 2012, LB836, § 1.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

(b) PUBLIC FUNDS DEPOSIT SECURITY ACT

77-2387 Terms, defined.

For purposes of the Public Funds Deposit Security Act, unless the context otherwise requires:

(1) Affiliate means any entity that controls, is controlled by, or is under common control with another entity;

(2) Bank means any state-chartered or federally chartered bank which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a state-chartered or federally chartered bank which maintained a main chartered office in this state prior to becoming a branch of such state-chartered or federally chartered bank;

(3) Capital stock financial institution means a capital stock state building and loan association, a capital stock federal savings and loan association, a capital stock federal savings bank, and a capital stock state savings bank, which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a capital stock financial institution which maintained a main chartered office in this state prior to becoming a branch of such capital stock financial institution;

(4) Control means to own directly or indirectly or to control in any manner twenty-five percent of the voting shares of any bank, capital stock financial institution, or holding company or to control in any manner the election of the majority of directors of any bank, capital stock financial institution, or holding company;

(5) Custodial official means an officer or an employee of the State of Nebraska or any political subdivision who, by law, is made custodian of or has control over public money or public funds subject to the act or the security for the deposit of public money or public funds subject to the act;

(6) Deposit guaranty bond means a bond underwritten by an insurance company authorized to do business in this state which provides coverage for deposits of a governing authority which are in excess of the amounts insured or guaranteed by the Federal Deposit Insurance Corporation;

(7) Event of default means the issuance of an order by a supervisory authority or a receiver which restrains a bank, capital stock financial institution, or qualifying mutual financial institution from paying its deposit liabilities;

(8) Governing authority means the official, or the governing board, council, or other body or group of officials, authorized to designate a bank, capital stock financial institution, or qualifying mutual financial institution as a depository of public money or public funds subject to the act;

(9) Governmental unit means the State of Nebraska or any political subdivision thereof;

(10) Political subdivision means any county, city, village, township, district, authority, or other public corporation or entity, whether organized and existing under direct provisions of the Constitution of Nebraska or laws of the State of Nebraska or by virtue of a charter, corporate articles, or other legal instruments executed under authority of the constitution or laws, including any entity

created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act;

(11) Qualifying mutual financial institution shall have the same meaning as in section 77-2365.01;

(12) Repurchase agreement means an agreement to purchase securities by the governing authority by which the counterparty bank, capital stock financial institution, or qualifying mutual financial institution will repurchase the securities on or before a specified date and for a specified amount and the counterparty bank, capital stock financial institution, or qualifying mutual financial institution will deliver the underlying securities to the governing authority by book entry, physical delivery, or third-party custodial agreement. The transfer of underlying securities to the counterparty bank's, capital stock financial institution's, or qualifying mutual financial institution's customer book entry account may be used for book entry delivery if the governing authority so chooses; and

(13) Securities means:

(a) Bonds or obligations fully and unconditionally guaranteed both as to principal and interest by the United States Government;

(b) United States Government notes, certificates of indebtedness, or treasury bills of any issue;

(c) United States Government bonds;

(d) United States Government guaranteed bonds or notes;

(e) Bonds or notes of United States Government agencies;

(f) Bonds of any state or political subdivision which are fully defeased as to principal and interest by any combination of bonds or notes authorized in subdivision (c), (d), or (e) of this subdivision;

(g) Bonds or obligations, including mortgage-backed securities and collateralized mortgage obligations, issued by or backed by collateral one hundred percent guaranteed by the Federal Home Loan Mortgage Corporation, the Federal Farm Credit System, a Federal Home Loan Bank, or the Federal National Mortgage Association;

(h) Repurchase agreements the subject securities of which are any of the securities described in subdivisions (a) through (g) of this subdivision;

(i) Securities issued under the authority of the Federal Farm Loan Act;

(j) Loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture;

(k) Guaranty agreements of the Small Business Administration of the United States Government;

(l) Bonds or obligations of any county, city, village, metropolitan utilities district, public power and irrigation district, sewer district, fire protection district, rural water district, or school district in this state which have been issued as required by law;

(m) Bonds of the State of Nebraska or of any other state which are purchased by the Board of Educational Lands and Funds of this state for investment in the permanent school fund or which are purchased by the state investment officer of this state for investment in the permanent school fund;

(n) Bonds or obligations of another state, or a political subdivision of another state, which are rated within the two highest classifications by at least one of the standard rating services;

(o) Warrants of the State of Nebraska;

(p) Warrants of any county, city, village, local hospital district, or school district in this state;

(q) Irrevocable, nontransferable, unconditional standby letters of credit issued by a Federal Home Loan Bank; and

(r) Certificates of deposit fully insured or guaranteed by the Federal Deposit Insurance Corporation that are issued to a bank, capital stock financial institution, or qualifying mutual financial institution furnishing securities pursuant to the Public Funds Deposit Security Act.

Source: Laws 1996, LB 1274, § 2; Laws 1997, LB 275, § 2; Laws 2000, LB 932, § 39; Laws 2001, LB 362, § 82; Laws 2001, LB 420, § 35; Laws 2003, LB 131, § 37; Laws 2003, LB 175, § 14; Laws 2004, LB 999, § 50; Laws 2009, LB259, § 27; Laws 2011, LB78, § 1; Laws 2013, LB155, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

77-2398 Deposits in excess of insured or guaranteed amount; requirements.

(1) As an alternative to the requirements to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation pursuant to sections 77-2389 and 77-2394, a bank, capital stock financial institution, or qualifying mutual financial institution designated as a public depository may secure the deposits of one or more governmental units by providing a deposit guaranty bond or by depositing, pledging, or granting a security interest in a single pool of securities to secure the repayment of all public money or public funds deposited in the bank, capital stock financial institution, or qualifying mutual financial institution by such governmental units and not otherwise secured pursuant to law, if at all times the total value of the deposit guaranty bond is at least equal to the amount on deposit which is in excess of the amount so insured or guaranteed or the aggregate market value of the pool of securities so deposited, pledged, or in which a security interest is granted is at least equal to one hundred five percent of the amount on deposit which is in excess of the amount so insured or guaranteed. Each such bank, capital stock financial institution, or qualifying mutual financial institution shall carry on its accounting records at all times a general ledger or other appropriate account of the total amount of all public money or public funds to be secured by a deposit guaranty bond or by the pool of securities, as determined at the opening of business each day, and the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest is granted to secure such public money or public funds. For purposes of this section, a pool of securities shall include shares of investment companies registered under the federal Investment Company Act of 1940 when the investment companies' assets are limited to obligations that are eligible for investment by the bank, capital stock financial institution, or qualifying mutual financial institution and

limited by their prospectuses to owning securities enumerated in section 77-2387.

(2) Only the securities listed in subdivision (13) of section 77-2387 may be provided and accepted as security for the deposit of public money or public funds and shall be eligible as collateral. The qualified trustee shall accept no security which is not listed in subdivision (13) of section 77-2387.

Source: Laws 2000, LB 932, § 43; Laws 2001, LB 362, § 92; Laws 2009, LB259, § 31; Laws 2011, LB78, § 2; Laws 2013, LB155, § 2.

ARTICLE 26 CIGARETTE TAX

Section	
77-2601.	Terms, defined.
77-2602.	Cigarette tax; rate; disposition of proceeds; priority.
77-2602.03.	Increase in tax; applicability; stamping agents; duties; credit to wholesaler.
77-2602.05.	Cigarette tax; exempt transaction; refund; application; documentation; interest; tax refund formula authorized.
77-2602.06.	Governor; agreement with federally recognized Indian tribe authorized; contents; tribal taxes; additional agreement, compact, or treaty authorized.
77-2603.	Tax; stamps; tax meter impressions; requirements; stamping agent; license; application; form; service of process; corporate surety bond; Tax Commissioner; duties; directory license; application; term.
77-2603.01.	Tribal stamp; authorized.
77-2604.	Tax Commissioner; forms; reports; contents; when due; sharing of information.
77-2604.01.	Cigarette sales; reports required; form; contents; sharing of information.
77-2605.	Cigarette purchase or sale records; inspection.
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77-2608.	Tax Commissioner; duties; audit; discount; funds; disposition.
77-2610.	Stamps; redemption by Tax Commissioner; errors; adjust.
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77-2613.	State Treasurer; disbursements for administration.
77-2614.	License; permit; stamp; alter; forge; counterfeit; violations; penalty.
77-2615.	Prohibited acts; violations; penalty; prima facie evidence.
77-2615.01.	Licensees; disciplinary action; procedure; appeal; joint and several liability; when.
77-2620.	Contraband cigarettes; confiscation; destruction.
77-2622.	Common carrier; unstamped cigarettes; bond; permit; violation; penalty.

77-2601 Terms, defined.

For purposes of sections 77-2601 to 77-2615:

(1) Person means and includes every individual, firm, association, joint-stock company, partnership, limited liability company, syndicate, corporation, trustee, or other legal entity, including any Indian tribe or instrumentality thereof;

(2) Wholesale dealer means a person who sells cigarettes to licensed retail dealers other than branch stores operated by or connected with such wholesale dealer for purposes of resale and is licensed under section 28-1423;

(3) Retail dealer includes every person other than a wholesale dealer engaged in the business of selling cigarettes in this state irrespective of quantity, amount, or number of sales thereof;

(4) Tax Commissioner means the Tax Commissioner of the State of Nebraska;

(5) Cigarette means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other material excepting tobacco;

(6) Consumer means any person, firm, association, partnership, limited liability company, joint-stock company, syndicate, or corporation not having a license to sell cigarettes;

(7) Sales entity affiliate means an entity that (a) sells cigarettes that it acquires directly from a manufacturer or importer and (b) is affiliated with that manufacturer or importer. Entities are affiliated with each other if one directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the other. Unless provided otherwise, manufacturer or importer includes any sales entity affiliate of that manufacturer or importer;

(8) Stamping agent has the same meaning as in section 69-2705; and

(9) Indian country means (a) all land in this state within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of this state, and (c) all Indian allotments in this state, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

Source: Laws 1947, c. 267, § 1, p. 861; Laws 1978, LB 748, § 41; Laws 1993, LB 121, § 499; Laws 2002, LB 989, § 9; Laws 2003, LB 572, § 9; Laws 2011, LB590, § 19.

77-2602 Cigarette tax; rate; disposition of proceeds; priority.

(1) Every stamping agent 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; Laws 2011, LB590, § 20.

Cross References

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.

77-2602.03 Increase in tax; applicability; stamping agents; duties; credit to wholesaler.

The increase in the tax shall apply to all unused stamps, meter impressions, and packages of stamped cigarettes owned by stamping agents at 12:01 a.m. on the day the increase becomes operative. On the date any change in the tax takes effect, each stamping agent shall take an inventory of all unused stamps, meter impressions, and packages of stamped cigarettes owned by the cigarette wholesaler at 12:01 a.m. The additional tax shall be remitted with the return for the last month preceding the date any change in the tax takes effect. The Tax Commissioner shall credit to each stamping agent an amount equal to the additional tax on two weeks of such stamping agent's average purchases of stamps.

Source: Laws 1982, LB 753, § 3; Laws 1985, LB 653A, § 2; Laws 1985, Second Spec. Sess., LB 3, § 2; Laws 1987, LB 730, § 28; Laws 2002, LB 989, § 10; Laws 2011, LB590, § 21.

77-2602.05 Cigarette tax; exempt transaction; refund; application; documentation; interest; tax refund formula authorized.

(1) A person that paid taxes applicable under section 77-2602 on cigarettes sold in an exempt transaction shall be eligible for a refund of the taxes paid on those cigarettes.

(2) Exempt transactions, for purposes of this section and section 69-2703, are defined as:

(a) Cigarette sales on a federal installation in a transaction that is exempt from state taxation under federal law; and

(b) Cigarette sales on an Indian tribe's Indian country to its tribal members where state taxation is precluded by federal law.

(3) Except as provided in subsection (5) of this section, the person seeking a refund of taxes shall submit an application to the Tax Commissioner providing documentation sufficient to demonstrate (a) that the cigarettes were sold in a package bearing the correct stamp required under section 77-2603 or 77-2603.01 and that the stamp was one that required payment of tax, (b) that the person paid the applicable taxes in question, (c) that the cigarettes were sold in an exempt transaction, and (d) that the person has not previously obtained the refund on the cigarettes. The documentation shall include, in addition to information necessary to meet the requirements of subdivisions (3)(a) through (d) of this section and any other information that the Tax Commissioner may reasonably require, documents showing the identity of the seller and purchaser and the places of shipment and delivery of the cigarettes. The Tax Commissioner shall verify the accuracy and completeness of the required documentation and information before granting the requested refund.

(4) If a meritorious refund claim under subsection (3) of this section is not paid within sixty days after submission of the required documentation, the refund shall include interest on the amount of such refund at the rate specified

in section 45-104.02 as such rate existed at the date of submission of the required documentation.

(5) The Tax Commissioner and an Indian tribe may agree upon a tax refund formula to operate in lieu of application for refunds under subsection (3) of this section. The aggregate refund provided to an Indian tribe under a formula for a year shall not exceed the aggregate tax paid by entities owned and operated by that tribe or member of that tribe on cigarettes sold in exempt transactions on that tribe's Indian country during that year. Refunds of taxes under subsection (3) of this section shall not be available for cigarettes sold in exempt transactions on an Indian tribe's Indian country by an Indian tribe that agrees upon a refund formula under this subsection. Nothing in this subsection shall limit the state's authority to enter into an agreement pursuant to section 77-2602.06 pertaining to the collection and dissemination of any cigarette taxes which may otherwise be inconsistent with this subsection.

Source: Laws 2011, LB590, § 22.

77-2602.06 Governor; agreement with federally recognized Indian tribe authorized; contents; tribal taxes; additional agreement, compact, or treaty authorized.

(1) The Governor or his or her designated representative may negotiate and execute an agreement with the governing body of any federally recognized Indian tribe within the State of Nebraska concerning the collection and dissemination of any cigarette tax or other tobacco product tax under this section and sections 77-2602.05 and 77-2603.01 or escrow collected pursuant to section 69-2703, on sales of cigarettes, roll-your-own, or smokeless tobacco made or sold on a federally recognized Indian tribe's Indian country. The agreement shall specify:

- (a) Its duration;
- (b) Its purpose;
- (c) Provisions for administering, collecting, and enforcing the agreement and for the mutual waiver of sovereign immunity objections with respect to such provisions;
- (d) Remittance of taxes and escrow collected;
- (e) The division of the proceeds of the tax and escrow between the parties;
- (f) The method to be employed in accomplishing the partial or complete termination of the agreement;
- (g) A dispute resolution procedure;
- (h) Adequate reporting and auditing provisions; and
- (i) Any other necessary and proper matters.

(2) The agreement shall require tribal taxes to be imposed equally on all cigarettes and other tobacco products regardless of manufacturer or brand.

(3) The agreement shall require that all packages of cigarettes bear either a stamp under section 77-2603 or a tribal stamp under section 77-2603.01.

(4) The agreement may provide for the sale of cigarettes not included in the directory under section 69-2706, but only if the agreement requires that such cigarettes bear the tribal stamp under section 77-2603.01 and only if the agreement includes provisions to account for escrow deposits on such cigarettes in amounts equal to and in a manner consistent with the deposits

required of manufacturers under section 69-2703 or otherwise requires payment of escrow by the manufacturers in accordance with section 69-2703 and pursuant to section 69-2708.01.

(5) An Indian tribe entering into an agreement under this section shall agree not to license or otherwise authorize an individual tribal member or other person or entity to sell cigarettes, roll-your-own, or smokeless tobacco in violation of the terms of the agreement.

(6) The state may, in the best interests of the state, enter into any future agreement, compact, or treaty with any Indian tribe that is consistent with sections 77-2602.05, 77-2602.06, and 77-2603.01.

Source: Laws 2011, LB590, § 23.

77-2603 Tax; stamps; tax meter impressions; requirements; stamping agent; license; application; form; service of process; corporate surety bond; Tax Commissioner; duties; directory license; application; term.

(1) The tax, as levied in section 77-2602, shall be paid and stamps or cigarette tax meter impressions shall be affixed or printed with a cigarette tax meter by the person having possession and ownership of such cigarettes after the same shall have come to rest in this state and intended to be sold or given away in this state. Nothing in sections 77-2601 to 77-2615 shall be construed to require a stamping agent to fix the retail price or to require any retail dealer to sell at any particular price. Subject to such rules and regulations as the Tax Commissioner shall prescribe, tax meter machines may be used when approved by the Tax Commissioner to affix a suitable stamp or impression on each package of cigarettes and cigarettes with a tax meter impression shall be treated as stamped cigarettes for purposes of sections 69-2701 to 69-2711 and 77-2601 to 77-2615. Before any person is issued a license to affix stamps or cigarette tax meter impressions, the person shall make application to become licensed as a stamping agent to the Tax Commissioner on a form provided by the Tax Commissioner to engage in such activity.

(2) Any manufacturer, importer, sales entity affiliate, wholesale dealer, or retail dealer that engages in the business of selling cigarettes may apply to be licensed as a stamping agent in accordance with this section. A license shall be issued by the Tax Commissioner to an applicant upon the applicant's:

(a) Meeting all requirements of sections 69-2701 to 69-2711 and 77-2601 to 77-2615 and rules and regulations pursuant to such sections;

(b) Certifying on a form prescribed by the Tax Commissioner that it will comply with the requirements of section 69-2708; and

(c) In the case of an applicant located outside of the state, designating an agent for service of process in Nebraska, and providing notice thereof as required by section 69-2707, in connection with enforcement of sections 69-2701 to 69-2711 and 77-2601 to 77-2615, and, if approval is given by the Tax Commissioner, the manufacturer, importer, sales entity affiliate, wholesale dealer, or retail dealer shall furnish a corporate surety bond, conditioned to faithfully comply with all the requirements of sections 77-2601 to 77-2615, in a sum not less than ten thousand dollars. Such bond shall be subject to forfeiture if the stamping agent fails to pay the shortfall amount under subsection (1) of section 69-2708.01 unless the stamping agent is excused from liability under subsection (3) of section 69-2708.01.

(3) Nothing in sections 77-2601 to 77-2615 shall prevent the Tax Commissioner from affixing the stamps or meter impressions in lieu of the provisions for affixing stamps and meter impressions by stamping agents as determined by such rules and regulations adopted by the Tax Commissioner.

(4) The Tax Commissioner shall list on its web site the names of all persons licensed as stamping agents under this section. Manufacturers, importers, and sales entity affiliates shall be entitled to rely upon the list in selling cigarettes as provided in section 69-2706.

(5) A manufacturer, importer, sales entity affiliate, wholesale dealer, or retail dealer that engages in the business of selling cigarettes and that holds a valid stamping agent license under subsection (1) of this section may apply for a directory license allowing it to purchase or possess in the state cigarettes of a manufacturer or brand family not at the time of purchase listed in the directory for sale into another state if permitted under section 69-2706. A directory license shall be issued by the Tax Commissioner to an applicant upon the applicant's (a) demonstrating that it holds a valid license under subsection (1) of this section and (b) providing a certification by an officer thereof on a form prescribed by the Tax Commissioner that any cigarettes of a manufacturer or brand family not listed in the directory will be purchased or possessed solely for sale or transfer into another state as permitted by section 69-2706. The directory license shall remain in effect for a period of one year.

(6) No directory license may be issued to a person that acted inconsistently with a certification it previously made under subsection (2) of this section.

(7) The Tax Commissioner shall list on its web site the names of all persons holding a directory license. Manufacturers, importers, sales entity affiliates, and stamping agents shall be entitled to rely upon the list in selling cigarettes as provided in section 69-2706.

Source: Laws 1947, c. 267, § 3, p. 862; Laws 1949, c. 245, § 1, p. 665; Laws 1951, c. 271, § 1, p. 905; Laws 1963, c. 458, § 1, p. 1484; Laws 2002, LB 989, § 11; Laws 2003, LB 572, § 10; Laws 2011, LB590, § 24.

77-2603.01 Tribal stamp; authorized.

The state may enter into an agreement with an Indian tribe pursuant to section 77-2602.06 which contemplates the use of a tribal stamp for sales of cigarettes on an Indian tribe's Indian country in lieu of the cigarette stamp required under section 77-2603.

Source: Laws 2011, LB590, § 25.

77-2604 Tax Commissioner; forms; reports; contents; when due; sharing of information.

(1) Every stamping agent, wholesale dealer, and retail dealer who is subject to sections 77-2601 to 77-2622 shall make and file with the Tax Commissioner, on or before the fifteenth day of each calendar month on blanks furnished by the Tax Commissioner, true, correct, and sworn reports covering, for the last preceding calendar month, the number of cigarettes purchased, from whom purchased, the specific kinds and brands thereof, the manufacturer, if known, and such other matters and in such detail as the Tax Commissioner may require.

(2)(a) Each manufacturer and importer that sells cigarettes in or into the state shall, within fifteen days following the end of each month, file a report on a form and in the manner prescribed by the Tax Commissioner and certify to the state that the report is complete and accurate.

(b) The report shall contain the following information: The total number of cigarettes sold by that manufacturer or importer in or into the state during that month and identifying by name and number of cigarettes, (i) the manufacturers of those cigarettes, (ii) the brand families of those cigarettes, and (iii) the purchasers of those cigarettes. A manufacturer's or importer's report shall include cigarettes sold in or into the state through its sales entity affiliate.

(c) The requirements of this subsection shall be satisfied and no further report shall be required under this section with respect to cigarettes if the manufacturer or importer timely submits to the Tax Commissioner the report or reports required to be submitted by it with respect to those cigarettes under 15 U.S.C. 376 to the Tax Commissioner and certifies to the state that the reports are complete and accurate.

(d) Upon request by the Tax Commissioner, a manufacturer or importer shall provide copies of all sales reports referenced in subdivisions (2)(a) and (b) of this section that it filed in other states.

(e) Each manufacturer and importer that sells cigarettes in or into the state shall either (i) submit its federal excise tax returns and all monthly operational reports on Alcohol and Tobacco Tax and Trade Bureau Form 5210.5 and all adjustments, changes, and amendments to such reports to the Tax Commissioner no later than sixty days after the close of the quarter in which the returns were filed or (ii) submit to the United States Treasury a request or consent under section 6103(c) of the Internal Revenue Code of 1986 as defined in section 49-801.01 authorizing the federal Alcohol and Tobacco Tax and Trade Bureau and, in the case of a foreign manufacturer or importer, the United States Customs Service to disclose the manufacturer's or importer's federal returns to the Tax Commissioner as of sixty days after the close of the quarter in which the returns were filed.

(3) The Tax Commissioner may share the information reported under this section with the taxing or law enforcement authorities of this state and other states.

Source: Laws 1947, c. 267, § 4, p. 862; Laws 2002, LB 989, § 12; Laws 2011, LB590, § 26.

77-2604.01 Cigarette sales; reports required; form; contents; sharing of information.

(1) Any person that sells cigarettes from this state into another state shall, within fifteen days following the end of each month, file a report on a form and in the manner prescribed by the Tax Commissioner and certify to the state that the report is complete and accurate.

(2) The report shall contain the following information:

(a) The total number of cigarettes sold from this state into another state by the person during that month, identifying by name and number of cigarettes (i) the manufacturers of those cigarettes, (ii) the brand families of those cigarettes, and (iii) the name and address of each recipient of those cigarettes;

(b) The number of stamps of each other state the person affixed to the packages containing those cigarettes during that month, the total number of cigarettes contained in the packages to which it affixed each respective other state's stamp and by name and number of cigarettes, and the manufacturers and brand families of the packages to which it affixed each respective other state's stamp; and

(c) If the person sold cigarettes during that month from this state into another state in packages not bearing a stamp of the other state, (i) the total number of cigarettes contained in such packages, identifying by name and number of cigarettes, the manufacturers of those cigarettes, the brand families of those cigarettes, and the name and address of each recipient of those cigarettes, and (ii) the person's basis for belief that such state permits the sale of the cigarettes to consumers in a package not bearing a stamp, and the amount of excise, use, or similar tax imposed on the cigarettes paid by the person to such state on the cigarettes. Manufacturers and importers need include the information described in subdivision (2)(c)(i) of this section only as to cigarettes not sold to a person authorized by the law of the other state to affix the stamp required by the other state.

(3) In the case of a manufacturer or importer, the report shall include cigarettes sold from this state into another state through its sales entity affiliate. A sales entity affiliate shall file a separate report under this section only to the extent that it sold cigarettes from this state into another state not separately reported under this section by its affiliated manufacturer or importer.

(4) The Tax Commissioner may share the information reported under this section with the taxing or law enforcement authorities of this state or other states.

Source: Laws 2011, LB590, § 27.

77-2605 Cigarette purchase or sale records; inspection.

The books, records, papers, receipts, invoices, and supply of cigarettes of any person, including wholesale and retail dealers, stamping agents, and persons transporting cigarettes, subject to the provisions of sections 77-2601 to 77-2615 which pertain to the purchase or sale of cigarettes shall be subject to inspection at any time during ordinary business hours by the Tax Commissioner or his or her representatives.

Source: Laws 1947, c. 267, § 5, p. 862; Laws 2011, LB590, § 28.

77-2607 Stamping agent; stock; exempt from tax; conditions.

Each stamping agent may set aside such portion of the stamping agent's stock of cigarettes as is not intended to be sold or given away in this state and it will not be necessary to affix the stamps or tax meter impressions thereon required under section 77-2606, except that if such stock is not disposed of and out of the possession of the stamping agent within thirty days of the date of receipt thereof, the cigarettes, packages, or pieces shall immediately be stamped as required by sections 77-2601 to 77-2615. Each stamping agent shall immediately mark in ink on each unopened box, carton, or other container of such cigarettes, received and the date of receipt and shall affix the stamping agent's signature thereto. Within forty-eight hours after such box, carton, or other container is opened, the stamping agent shall immediately affix such

stamps or tax impressions to each package and cancel the stamps affixed thereto.

Source: Laws 1947, c. 267, § 7, p. 863; Laws 2011, LB590, § 29.

77-2608 Tax Commissioner; duties; audit; discount; funds; disposition.

The Tax Commissioner shall prepare and have suitable stamps for use on each kind of piece or package of cigarettes, except when cigarette tax meter impressions are affixed. Requisition for the preparation of such stamps shall be made through the materiel division of the Department of Administrative Services as other state supplies are requisitioned, and the Tax Commissioner and his or her bondsperson shall be liable for the value of all such stamps delivered to him or her. The Auditor of Public Accounts shall audit as often as the auditor deems advisable the records of the Tax Commissioner with respect to the money received from the sale of stamps and as revenue from tax meter impressions for the purpose of determining the accuracy and correctness of the same. The Tax Commissioner shall sell or distribute the stamps only to licensed stamping agents, as provided in section 77-2603 or 77-2603.01, and the stamping agent shall keep an accurate record of all stamps coming into and leaving the stamping agent's possession. Such stamps shall be sold and accounted for at the face value thereof, except that the Tax Commissioner may, by rule and regulation certified to the State Treasurer, authorize the sale thereof to stamping agents in this state or outside of this state at a discount of one and eighty-five hundredths percent of such face value of the tax as a commission for affixing and canceling such stamps. Any stamping agent using a tax meter machine shall be entitled to the same discount as allowed a stamping agent for affixing and canceling the stamps. The money received by the Tax Commissioner from the sale of the stamps and as revenue from such tax meter impressions shall be deposited by him or her daily with the State Treasurer who shall credit such money as provided in section 77-2602. Upon proof by the Tax Commissioner that he or she can affix such stamps or meter impressions, warehouse and distribute such cigarettes, and collect such revenue at a cost less than any discount allowed to stamping agents pursuant to this section, he or she may then proceed to affix the stamps himself or herself after giving the stamping agents sixty days' notice and purchasing all equipment used by them for the purpose of affixing such stamps or meter impressions at a fair market value.

Source: Laws 1947, c. 267, § 8, p. 863; Laws 1949, c. 245, § 2, p. 666; Laws 1949, c. 246, § 1, p. 668; Laws 1963, c. 458, § 2, p. 1485; Laws 1965, c. 501, § 3, p. 1596; Laws 1965, c. 500, § 2, p. 1591; Laws 1971, LB 87, § 2; Laws 1985, LB 653A, § 3; Laws 1985, Second Spec. Sess., LB 3, § 3; Laws 1987, LB 730, § 29; Laws 2000, LB 654, § 4; Laws 2002, Second Spec. Sess., LB 46, § 1; Laws 2003, LB 572, § 11; Laws 2011, LB337, § 6; Laws 2011, LB590, § 30.

77-2610 Stamps; redemption by Tax Commissioner; errors; adjust.

Upon the written request of the original purchaser thereof and upon the return of any unused stamps, the Tax Commissioner shall redeem such stamps. The Tax Commissioner shall prepare a voucher showing the amount of such returned unused stamps and shall cause to be drawn a warrant upon the State Treasurer for such amount in favor of the person returning such unused

stamps. The refunds shall be paid from the various funds named in section 77-2602 in the same proportions as the proceeds of the tax are allocated. By the terms of sections 77-2601 to 77-2615, the Tax Commissioner and the State Treasurer are specifically authorized to adjust all errors in payments for unused stamps.

Source: Laws 1947, c. 267, § 10, p. 864; Laws 1959, c. 353, § 7, p. 1246; Laws 1965, c. 501, § 4, p. 1597; Laws 1965, c. 459, § 20, p. 1462; Laws 1969, c. 645, § 11, p. 2562; Laws 1971, LB 87, § 3; Laws 2011, LB590, § 31.

77-2612 Tax Commissioner; personnel; rules and regulations; stamping agent; license; fee.

The Tax Commissioner may employ, with the advice and consent of the Governor, a sufficient number of inspectors, clerks, assistants, and agents to enforce sections 77-2601 to 77-2622, including the collection of all stamp taxes and all revenue from cigarette tax meters. In such enforcement, the Tax Commissioner may call to his or her aid the Attorney General, any county attorney, any sheriff, any deputy sheriff, or any other peace officer. The compensation of all persons employed shall be fixed by the Governor and shall be paid from the revenue derived under such sections. The expenses of administering such sections, including necessary assistants, clerical help, cost of enforcement, cost of stamps, and incidental expenses, when approved by the Tax Commissioner, shall be paid by warrants, issued against the General Fund, but such warrants shall not exceed four percent of the funds collected under such sections, such expenses in each instance to be approved by the Tax Commissioner.

The Tax Commissioner may adopt and promulgate rules and regulations which are consistent with sections 77-2601 to 77-2622 and their proper enforcement.

Each stamping agent shall annually apply to the Tax Commissioner, upon forms to be furnished by the Tax Commissioner, for a license to use the tax meter machines, as set forth in section 77-2603, or to purchase such stamps as provided in section 77-2608, or both. The license shall expire on December 31 each year. Each wholesale dealer applying for a stamping agent license shall furnish with such application evidence satisfactory to the Tax Commissioner showing that the wholesale dealer has obtained a license as a wholesale dealer in accordance with section 28-1423. The applicant shall accompany the application with a fee of five hundred dollars to be placed in the General Fund if the license is granted and otherwise to be returned to the applicant. If the applicant is an individual, the application shall include the applicant's social security number. If the application is approved and the bond referred to in section 77-2603 is given and approved, if such bond is required under section 77-2603, the Tax Commissioner shall issue such license which shall be conspicuously posted in the place of business of such stamping agent.

Source: Laws 1947, c. 267, § 12, p. 864; Laws 1959, c. 353, § 8, p. 1246; Laws 1965, c. 501, § 5, p. 1597; Laws 1965, c. 500, § 3, p. 1591; Laws 1965, c. 364, § 19, p. 1193; Laws 1978, LB 748, § 43; Laws 1982, LB 928, § 63; Laws 1997, LB 752, § 211; Laws 2002, LB 989, § 14; Laws 2011, LB590, § 32.

77-2613 State Treasurer; disbursements for administration.

The State Treasurer shall place all sums of money received under sections 77-2601 to 77-2615 as provided in section 77-2602, and from time to time, upon voucher approved by the Tax Commissioner, disburse such sum or sums as may be necessary to administer and carry out the provisions of sections 77-2601 to 77-2615 relating to the collection of the tax, subject to the limitations provided in such sections.

Source: Laws 1947, c. 267, § 13, p. 865; Laws 1949, c. 245, § 3, p. 666; Laws 1959, c. 353, § 9, p. 1247; Laws 1965, c. 501, § 6, p. 1599; Laws 1965, c. 500, § 4, p. 1593; Laws 2011, LB590, § 33.

77-2614 License; permit; stamp; alter; forge; counterfeit; violations; penalty.

Any person who, with intent to defraud the state, shall make, alter, forge, or counterfeit any license, permit, stamp, or cigarette tax meter impression provided for in sections 77-2601 to 77-2615, or who shall have in his or her possession any forged, counterfeited, spurious, or altered license, permit, stamp, or cigarette tax meter impression, with intent to use the same, knowing or having reasonable grounds to believe the same to be such, or shall have in his or her possession one or more cigarette stamps or cigarette tax meter impressions which he or she knows have been removed from the pieces or packages of cigarettes to which they were affixed, or who affixes to any piece or package of cigarettes a stamp or cigarette tax meter impression which he or she knows has been removed from any other piece or package of cigarettes shall be deemed guilty of a Class IV felony.

Source: Laws 1947, c. 267, § 14, p. 865; Laws 1977, LB 39, § 236; Laws 2011, LB590, § 34.

77-2615 Prohibited acts; violations; penalty; prima facie evidence.

Any person who violates sections 77-2601 to 77-2615, or any rule or regulation adopted and promulgated in accordance therewith, for which a specific penalty is not otherwise provided or who shall, except as permitted by sections 77-2601 to 77-2615, sell, deliver, or accept, with intent to evade the provisions of such sections, any cigarettes upon which the tax provided by section 77-2602 has not been paid or who affixes a stamp permitted under section 77-2603 or 77-2603.01 to a package of cigarettes of a tobacco product manufacturer or brand family not included in the directory pursuant to section 69-2706 or who sells, offers, or possesses for sale in this state cigarettes of a tobacco product manufacturer or brand family not included in the directory shall be deemed guilty of a Class IV felony. If any person is found to have in his or her possession more than ten unstamped packages of cigarettes, except as permitted under section 77-2607, it shall be prima facie evidence of attempt to evade sections 77-2601 to 77-2615.

Source: Laws 1947, c. 267, § 15, p. 866; Laws 1949, c. 245, § 4, p. 667; Laws 1977, LB 39, § 237; Laws 2011, LB590, § 35.

77-2615.01 Licensees; disciplinary action; procedure; appeal; joint and several liability; when.

(1) In addition to sections 77-2615 and 77-2622, for any violation of sections 77-2601 to 77-2622 or the rules and regulations adopted and promulgated under such sections, the Tax Commissioner may:

(a) After notice and hearing, suspend or revoke the licenses of any person licensed under sections 28-1420 to 28-1429 or 77-2601 to 77-2622. Notice of hearing shall be given as provided in the Administrative Procedure Act; and

(b) Impose an administrative penalty not to exceed one thousand dollars for any violation.

(2) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of suspension or revocation on the premises occupied by him or her. No disciplinary proceeding or action shall be barred or abated by the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under sections 28-1420 to 28-1429 or 77-2601 to 77-2622.

(3) Any person aggrieved by any decision, order, or finding of the Tax Commissioner may appeal the decision, order, or finding, and the appeal shall be in accordance with the Administrative Procedure Act.

(4) If a person's license has been suspended or revoked and the person's name has been removed for at least ten days from the list of licensed entities published by the Tax Commissioner under subsection (4) of section 77-2603, any person that sells cigarettes to or purchases cigarettes from such person shall be jointly and severally liable for any taxes applicable to such cigarettes under section 77-2602 and for any escrow due on such cigarettes under section 69-2703.

Source: Laws 2002, LB 989, § 15; Laws 2011, LB590, § 36.

Cross References

Administrative Procedure Act, see section 84-920.

77-2620 Contraband cigarettes; confiscation; destruction.

All cigarettes subject to the tax as imposed by section 77-2602, to which stamps have not been affixed or tax impressions made, as required by sections 77-2601 to 77-2615, except as permitted by the provisions of section 77-2607, when found in any place in this state are declared to be contraband goods and may be seized by the Tax Commissioner, by the Tax Commissioner's agents or employees, or by any peace officer of this state, when directed by the Tax Commissioner to do so, without a warrant. The Tax Commissioner may, upon satisfactory proof, direct the return of any confiscated cigarettes when he or she has reason to believe that the owner thereof has not willfully or intentionally evaded any tax imposed under section 77-2602. The Tax Commissioner may, in the absence of proof of good faith, confiscate any unstamped cigarettes or cigarettes without tax impressions found in the possession of any person, except as permitted by section 77-2607. Any cigarettes forfeited to the state under this section shall be destroyed or used for law enforcement purposes and then destroyed. The Tax Commissioner, his or her agents and employees, and any peace officer of this state, when directed so to do, shall not in any way be responsible in any court for the seizure or the confiscation of any unstamped packages of cigarettes or cigarettes without tax impressions.

Source: Laws 1951, c. 272, § 1, p. 906; Laws 1965, c. 501, § 8, p. 1599; Laws 1965, c. 500, § 5, p. 1593; Laws 2002, LB 989, § 17; Laws 2003, LB 572, § 12; Laws 2011, LB590, § 37.

77-2622 Common carrier; unstamped cigarettes; bond; permit; violation; penalty.

Failure to comply with section 77-2621 shall be cause for revocation of the permit issued under section 77-2621 and forfeiture of the bond posted pursuant to section 77-2621.

Source: Laws 1951, c. 255, § 2, p. 877; Laws 2011, LB590, § 38.

ARTICLE 27**SALES AND INCOME TAX**

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REVENUE AND TAXATION

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Section

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(s) RENEWABLE ENERGY TAX CREDIT

- 77-27,235. Renewable energy tax credit; Department of Revenue; powers.

(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; Laws 2008, LB916, § 5; Laws 2009, LB9, § 2; Laws 2012, LB727, § 34; Laws 2012, LB830, § 1; Laws 2012, LB970, § 1; Laws 2012, LB1080, § 2; Laws 2014, LB96, § 1; Laws 2014, LB867, § 8.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB96, section 1, with LB867, section 8, to reflect all amendments.

Note: Changes made by LB867 became operative April 1, 2014. Changes made by LB96 became operative October 1, 2014.

77-2701.01 Income tax; rate.

Pursuant to section 77-2715.01, for all taxable years beginning or deemed to begin on or after January 1, 1990, and before January 1, 1991, under the Internal Revenue Code of 1986, as amended, the rate of the income tax levied pursuant to section 77-2715 shall be three and forty-three-hundredths percent. Pursuant to section 77-2715.01, for all taxable years beginning or deemed to begin on or after January 1, 1991, and before January 1, 2013, under the Internal Revenue Code of 1986, as amended, the rate of the income tax levied pursuant to section 77-2715 shall be three and seventy-hundredths percent. Pursuant to section 77-2715.01, for all taxable years beginning or deemed to begin on or after January 1, 2013, under the Internal Revenue Code of 1986, as amended, the rates of the income tax levied pursuant to section 77-2715 shall be as provided in section 77-2715.03.

Source: Laws 1984, LB 892, § 1; Laws 1985, Second Spec. Sess., LB 35, § 1; Laws 1986, LB 539, § 1; Laws 1987, LB 773, § 2; Laws 1990, LB 1059, § 32; Laws 2012, LB970, § 2.

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 77-2701.55 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; Laws 2008, LB916, § 6; Laws 2009, LB9, § 3; Laws 2012, LB727, § 35; Laws 2012, LB830, § 2; Laws 2012, LB1080, § 3; Laws 2014, LB96, § 2; Laws 2014, LB867, § 9.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB96, section 2, with LB867, section 9, to reflect all amendments.

Note: Changes made by LB867 became operative April 1, 2014. Changes made by LB96 became operative October 1, 2014.

77-2701.11 Delivery charges, defined.

Delivery charges means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services, including, but not limited to, transportation, shipping, postage, handling, crating, and packing. Delivery charges does not include United States postage charges on direct mail that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

Source: Laws 2003, LB 282, § 15; Laws 2014, LB867, § 10.
Operative date April 1, 2014.

77-2701.16 Gross receipts, defined.

(1) 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.

(2) Gross receipts of every person engaged as a public utility specified in this subsection, as a community antenna television service operator, or as a satellite service operator or any person involved in connecting and installing services defined in subdivision (2)(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 ancillary services, except for conference bridging services, and intrastate telecommunications services, except for value-added, nonvoice data service.

(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)(i) In the furnishing of gas, sewer, water, and electricity service, other than electricity service to a customer-generator as defined in section 70-2002, the gross income received from the furnishing of such services upon billings or statements rendered to consumers for such utility services.

(ii) In the furnishing of electricity service to a customer-generator as defined in section 70-2002, the net energy use upon billings or statements rendered to customer-generators for such electricity service;

(d) In the furnishing of community antenna television service or satellite 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 or satellite service; 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 (2)(a) or (b) of this section or community antenna television service or satellite service specified in subdivision (2)(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.

(3) 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.

(4) 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. If any or all of the charge for installation is free to the customer and is paid by a third-party service provider to the installer, any tax due on that part of the activation commission, finder's fee, installation charge, or similar payment made by the third-party service provider shall be paid and remitted by the third-party service provider;

(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, (ii) specialty services performed on livestock as defined in section 54-183, and (iii) animal grooming performed by a licensed veterinarian or a licensed veterinary technician in conjunction with medical treatment; and

(h) The gross income received for detective services.

(5) Gross receipts includes the sale of admissions. When an admission to an activity or a membership constituting an admission 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.

(6) 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.

(7) 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.

(8) Gross receipts includes the sale of and recharge of prepaid calling service and prepaid wireless calling service.

(9) Gross receipts includes the retail sale of digital audio works, digital audiovisual works, digital codes, and digital books delivered electronically if the products are taxable when delivered on tangible storage media. A sale includes the transfer of a permanent right of use, the transfer of a right of use that terminates on some condition, and the transfer of a right of use conditioned upon the receipt of continued payments.

(10) 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.

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; Laws 2008, LB916, § 7; Laws 2009, LB165, § 5; Laws 2009, LB 587, § 1; Laws 2012, LB727, § 38; Laws 2013, LB90, § 1.

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;

(d) United States postage charges on direct mail that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; and

(e) 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, motorboat, all-terrain vehicle, or utility-type vehicle taken by any person in trade as all or a part of the consideration for a sale of another motor vehicle, motorboat, all-terrain vehicle, or utility-type vehicle.

Source: Laws 2003, LB 282, § 39; Laws 2007, LB223, § 6; Laws 2014, LB814, § 8; Laws 2014, LB867, § 11.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB814, section 8, with LB867, section 11, to reflect all amendments.

Note: Changes made by LB867 became operative April 1, 2014. Changes made by LB814 became operative October 1, 2014.

77-2701.38 Streamlined sales and use tax agreement, defined.

Streamlined sales and use tax agreement means the streamlined sales and use tax agreement approved by the implementing states on November 12, 2002, including amendments ratified by the Legislature pursuant to section 77-2712.03.

Source: Laws 2003, LB 282, § 42; Laws 2010, LB879, § 8.

77-2701.54 Data center, defined.

Data center means computers, supporting equipment, and other organized assembly of hardware or software that are designed to centralize the storage, management, or dissemination of data and information, environmentally controlled structures or facilities or interrelated structures or facilities that provide the infrastructure for housing the equipment, such as raised flooring, electricity supply, communication and data lines, Internet access, cooling, security, and fire suppression, and any building housing the foregoing.

Source: Laws 2012, LB1080, § 4.

77-2701.55 Admission, defined.

(1) Admission means the right or privilege to have access to a place or location where amusement, entertainment, or recreation is provided to an audience, spectators, or the participants in the activity. 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.

(2) For purposes of this section:

(a) Access to a place or location means the right to be in the place or location for purposes of amusement, entertainment, or recreation at a time when the general public is not allowed at that place or location absent the granting of the admission;

(b) Entertainment means the amusement or diversion provided to an audience or spectators by performers; and

(c) Recreation means a sport or activity engaged in by participants for purposes of refreshment, relaxation, or diversion of the participants. Recreation does not include practice or instruction.

(3) Admission does not include the lease or rental of a location, facility, or part of a location or facility if the lessor cedes the right to determine who is granted access to the location or facility to the lessee for the period of the lease or rental.

Source: Laws 2012, LB727, § 36.

(b) SALES AND USE TAX

77-2703 Sales and use tax; rate; collection; understatement; prohibited acts; 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 as a satellite service operator, any person involved in the connecting and installing of the services defined in subdivision (2)(a), (b), (d), or (e) of section 77-2701.16, or every person engaged as a retailer of intellectual or entertainment properties referred to in subsection (3) 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; the gross receipts from the provision of services defined in subsection (4) of section 77-2701.16; and the gross receipts from the sale of products delivered electronically as described in subsection (9) 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, 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 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 purchaser does not register such motor vehicle, semitrailer, or trailer 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 or the Department of Motor Vehicles. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer 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 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 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 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 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 purchaser does not register such motorboat 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. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer 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 shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer 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 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)(i) The tax imposed by this section on the sale of an all-terrain vehicle as defined in section 60-103 or a utility-type vehicle as defined in section 60-135.01 shall be the liability of the purchaser. The tax shall be collected by the county treasurer at the time the purchaser makes application for the certificate of title for the all-terrain vehicle or utility-type vehicle. At the time of the sale of an all-terrain vehicle or a utility-type vehicle, 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 purchaser does not obtain a certificate of title for such all-terrain vehicle or utility-type vehicle 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. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer 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 shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer 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 violates any rule or regulation pertaining to the collection of the use tax.

(ii) In the rental or lease of an all-terrain vehicle or a utility-type vehicle, the tax shall be collected by the lessor on the rental or lease price.

(iii) County treasurers are appointed as sales and use tax collectors for all sales of all-terrain vehicles or utility-type vehicles made outside of this state to purchasers or users of all-terrain vehicles or utility-type vehicles which are required to have a certificate of title in this state. The county treasurer shall collect the applicable use tax from the purchaser of an all-terrain vehicle or a utility-type vehicle purchased outside of this state at the time application for a certificate of title is made. The full use tax on the purchase price shall be collected by the county treasurer if a sales or occupation tax was not paid by the purchaser in the state of purchase. If a sales or occupation tax was lawfully paid in the state of purchase at a rate less than the tax imposed in this state, use tax must be collected on the difference as a condition for obtaining a certificate of title in this state.

(1) 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; Laws 2008, LB916, § 15; Laws 2011, LB211, § 3; Laws 2012, LB801, § 98; Laws 2014, LB814, § 9.

Operative date October 1, 2014.

Cross References

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 (4)(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 or, if no such registration has occurred, the place where such motor vehicle, semitrailer, or trailer is required to be registered.

(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; Laws 2008, LB916, § 16; Laws 2014, LB851, § 11.
Operative date October 1, 2014.

Cross References

Local Option Revenue Act, see section 77-27,148.

Motor Vehicle Registration Act, see section 60-301.

77-2703.03 Direct mail sourcing.

(1) This section applies when sourcing sales of direct mail. For purposes of this section:

(a) Advertising and promotional direct mail means direct mail that has the primary purpose of attracting public attention to a product, person, business, or organization or attempting to sell, popularize, or secure financial support for a product, person, business, or organization; and

(b)(i) Other direct mail means any direct mail that is not advertising and promotional direct mail, regardless of whether advertising and promotional direct mail is included in the same mailing.

(ii) Other direct mail includes, but is not limited to:

(A) Transactional direct mail that contains personal information specific to the addressee, including, but not limited to, invoices, bills, statements of account, and payroll advices;

(B) Any legally required mailings, including, but not limited to, privacy notices, tax reports, and stockholder reports; and

(C) Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents, including, but not limited to, newsletters and informational pieces.

(iii) Other direct mail does not include the development of billing information or any data processing service that is more than incidental.

(2) The sale of advertising and promotional direct mail shall be sourced as follows:

(a) If the purchaser of advertising and promotional direct mail provides the retailer with a direct payment permit, certificate of exemption authorized by the streamlined sales and use tax agreement, or written statement claiming exemption that has been approved, authorized, or accepted by the Tax Commissioner, the purchaser shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients and shall report and pay any applicable tax due. In the absence of bad faith, the retailer is relieved of all obligations to collect, pay, or remit any tax on any transaction involving advertising and promotional direct mail to which the direct payment permit, certificate of exemption, or written statement applies;

(b) If the purchaser of advertising and promotional direct mail provides the retailer with information showing the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients, the retailer shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients and shall collect and remit the applicable tax. In the absence of bad faith, the retailer is relieved of any further obligation to collect any additional tax on the sale of advertising and promotional direct mail; or

(c) If neither subdivision (a) of this subsection nor subdivision (b) of this subsection applies, then the sale of advertising and promotional direct mail shall be sourced according to subsection (6) of section 77-2703.01. The tax paid shall not constitute a properly paid tax for purposes of allowing credit against state and local option sales and use tax due.

(3) The sale of other direct mail shall be sourced as follows:

(a) If the purchaser of other direct mail provides the retailer with a direct payment permit, certificate of exemption authorized by the streamlined sales and use tax agreement, or written statement claiming exemption that has been approved, authorized, or accepted by the Tax Commissioner, the purchaser shall source the sale to the jurisdictions to which the other direct mail is to be delivered to recipients and shall report and pay any applicable tax due. In the absence of bad faith, the retailer is relieved of all obligations to collect, pay, or remit any tax on any transaction involving other direct mail to which the direct payment permit, certificate of exemption, or written statement applies; or

(b) If subdivision (a) of this subsection does not apply, then the sale of other direct mail shall be sourced according to subsection (4) of section 77-2703.01. The tax paid shall not constitute a properly paid tax for purposes of allowing credit against state and local option sales and use tax due.

(4) This section applies to transactions characterized under state law as sales of services only if the service is an integral part of the production and distribution of direct mail.

(5) If a transaction is a bundled transaction that includes advertising and promotional direct mail, this section applies only if the primary purpose of the transaction is the sale of advertising and promotional direct mail.

(6) This section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental, regardless of whether advertising and promotional direct mail is included in the same mailing.

Source: Laws 2003, LB 282, § 51; Laws 2011, LB211, § 4.

77-2704.10 Prepared food and food and food ingredients; fees and admissions; 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:

(1) Prepared food and food and food ingredients served by public or private schools, school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school or at any institution of higher education, public or private, during the regular school day or at an approved function of any such school or institution. This exemption does not apply to sales by an institution of higher education at any facility or function which is open to the general public;

(2) Prepared food and food and food ingredients sold by a church at a function of such church;

(3) Prepared food and food and food ingredients served to patients and inmates of hospitals and other institutions licensed by the state for the care of human beings;

(4) Prepared food and food and food ingredients sold at a political event by ballot question committees, candidate committees, independent committees, and political party committees as defined in the Nebraska Political Accountability and Disclosure Act or fees and admissions charged for such political event;

(5) Prepared food and food and food ingredients sold to the elderly, handicapped, or recipients of Supplemental Security Income by an organization that actually accepts electronic benefits transfer under regulations issued by the United States Department of Agriculture although it is not necessary for the purchaser to use electronic benefits transfer to pay for the prepared food and food and food ingredients;

(6) Fees and admissions charged by a public or private elementary or secondary school and fees and admissions charged by a school district, student organization, or parent-teacher association, pursuant to an agreement with the proper school authorities, in a public or private elementary or secondary school during the regular school day or at an approved function of any such school;

(7) Fees and admissions charged for participants in any activity provided by a nonprofit organization that is exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which organization conducts statewide sport events with multiple sports for both adults and youth; and

(8) Fees and admissions charged for participants in any activity provided by a nonprofit organization that is exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which organization is affiliated with a national organization, primarily dedicated to youth develop-

ment and healthy living, and offers sports instruction and sports leagues or sports events in multiple sports.

Source: Laws 1992, LB 871, § 34; Laws 1993, LB 345, § 40; Laws 2003, LB 282, § 54; Laws 2011, LB211, § 5; Laws 2012, LB727, § 39.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

77-2704.12 Nonprofit religious, service, educational, or medical organization; exemption; purchasing agents.

(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 purchases by (a) any nonprofit organization created exclusively for religious purposes, (b) any nonprofit organization providing services exclusively to the blind, (c) any nonprofit private educational institution established under sections 79-1601 to 79-1607, (d) any regionally or nationally accredited, nonprofit, privately controlled college or university with its primary campus physically located in Nebraska, (e) any nonprofit (i) hospital, (ii) health clinic when one or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives federal funds through the United States Public Health Service for the purpose of serving populations that are medically underserved, (iii) skilled nursing facility, (iv) intermediate care facility, (v) assisted-living facility, (vi) intermediate care facility for persons with developmental disabilities, (vii) nursing facility, (viii) home health agency, (ix) hospice or hospice service, (x) respite care service, or (xi) mental health center licensed under the Health Care Facility Licensure Act, (f) any nonprofit licensed residential child-caring agency, (g) any nonprofit licensed child-placing agency, or (h) any nonprofit organization certified by the Department of Health and Human Services to provide community-based services for persons with developmental disabilities.

(2) Any organization listed in subsection (1) of this section shall apply for an exemption on forms provided by the Tax Commissioner. The application shall be approved and a numbered certificate of exemption received by the applicant organization in order to be exempt from the sales and use tax.

(3) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of building materials which are physically annexed to the structure and which subsequently belong to the owner of the organization or institution. The appointment of purchasing agents shall be in writing and occur prior to having any building materials annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for a licensed not-for-profit institution.

(4) Any organization listed in subsection (1) of this section which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to the building materials being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use

tax paid by the contractor or repairperson on the building materials physically annexed to real estate in the construction, improvement, or repair.

(5) Any person purchasing, storing, using, or otherwise consuming building materials in the performance of any construction, improvement, or repair by or for any institution enumerated in subsection (1) of this section which is licensed upon completion although not licensed at the time of construction or improvement, which building materials are annexed to real estate and which subsequently belong to the owner of the institution, shall pay any applicable sales or use tax thereon. Upon becoming licensed and receiving a numbered certificate of exemption, the institution organized not for profit shall be entitled to a refund of the amount of taxes so paid in the performance of such construction, improvement, or repair and shall submit whatever evidence is required by the Tax Commissioner sufficient to establish the total sales and use tax paid upon the building materials physically annexed to real estate in the construction, improvement, or repair.

Source: Laws 1992, LB 871, § 36; Laws 1993, LB 345, § 42; Laws 1994, LB 977, § 3; Laws 1996, LB 900, § 1063; Laws 2000, LB 819, § 151; Laws 2002, LB 989, § 18; Laws 2004, LB 841, § 1; Laws 2004, LB 1017, § 13; Laws 2005, LB 216, § 6; Laws 2006, LB 1189, § 5; Laws 2008, LB575, § 1; Laws 2011, LB637, § 24; Laws 2012, LB40, § 1; Laws 2012, LB1097, § 1; Laws 2013, LB23, § 43; Laws 2013, LB265, § 46.

Cross References

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

77-2704.13 Fuel, energy, or water sources; 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:

(1) Sales and purchases of electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, propane, gasoline, coke, nuclear fuel, butane, wood as fuel, and corn as fuel when more than fifty percent of the amount purchased is for use directly in irrigation or farming;

(2) Sales and purchases of such energy sources or fuels when more than fifty percent of the amount purchased is for use directly in processing, manufacturing, or refining, in the generation of electricity, in the compression of natural gas for retail sale as a vehicle fuel, or by any hospital; and

(3) Sales and purchases of water used for irrigation of agricultural lands and manufacturing purposes.

Source: Laws 1992, LB 871, § 37; Laws 1992, Fourth Spec. Sess., LB 1, § 27; Laws 1993, LB 345, § 43; Laws 1994, LB 977, § 4; Laws 2003, LB 282, § 55; Laws 2009, LB9, § 4; Laws 2014, LB867, § 12.

Operative date January 1, 2015.

77-2704.15 Purchases by state, schools, or governmental units; exemption; purchasing agents.

(1)(a) 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 purchases by the state, including public educational institutions recognized

or established under the provisions of Chapter 85, or by any county, township, city, village, rural or suburban fire protection district, city airport authority, county airport authority, joint airport authority, drainage district organized under sections 31-401 to 31-450, land bank created under the Nebraska Municipal Land Bank Act, natural resources district, elected county fair board, housing agency as defined in section 71-1575 except for purchases for any commercial operation that does not exclusively benefit the residents of an affordable housing project, cemetery created under section 12-101, or joint entity or agency formed by any combination of two or more counties, townships, cities, villages, or other exempt governmental units pursuant to the Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, except for purchases for use in the business of furnishing gas, water, electricity, or heat, or by any irrigation or reclamation district, the irrigation division of any public power and irrigation district, or public schools or learning communities established under Chapter 79.

(b) For purposes of this subsection, purchases by the state or by a governmental unit listed in subdivision (a) of this subsection include purchases by a nonprofit corporation under a lease-purchase agreement, financing lease, or other instrument which provides for transfer of title to the property to the state or governmental unit upon payment of all amounts due thereunder. If a nonprofit corporation will be making purchases under a lease-purchase agreement, financing lease, or other instrument as part of a project with a total estimated cost that exceeds the threshold amount, then such purchases shall qualify for an exemption under this section only if the question of proceeding with such project has been submitted at a primary, general, or special election held within the governmental unit that will be a party to the lease-purchase agreement, financing lease, or other instrument and has been approved by the voters of such governmental unit. For purposes of this subdivision, (i) project means the acquisition of real property or the construction of a public building and (ii) threshold amount means the greater of fifty thousand dollars or six-tenths of one percent of the total actual value of real and personal property of the governmental unit that will be a party to the lease-purchase agreement, financing lease, or other instrument as of the end of the governmental unit's prior fiscal year.

(2) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of building materials which are physically annexed to the structure and which subsequently belong to the state or the governmental unit. The appointment of purchasing agents shall be in writing and occur prior to having any building materials annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for the state or a governmental unit.

(3) Any governmental unit listed in subsection (1) of this section, except the state, which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to the building materials being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on

the building materials physically annexed to real estate in the construction, improvement, or repair.

Source: Laws 1992, LB 871, § 39; Laws 1993, LB 345, § 44; Laws 1994, LB 977, § 5; Laws 1994, LB 1207, § 16; Laws 1999, LB 87, § 86; Laws 1999, LB 232, § 1; Laws 2000, LB 557, § 1; Laws 2002, LB 123, § 1; Laws 2004, LB 1017, § 14; Laws 2006, LB 1189, § 6; Laws 2009, LB392, § 8; Laws 2011, LB252, § 2; Laws 2012, LB902, § 2; Laws 2013, LB97, § 26.

Cross References

Integrated Solid Waste Management Act, see section 13-2001.

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Nebraska Municipal Land Bank Act, see section 19-5201.

77-2704.36 Agricultural machinery and equipment; exemption.

Sales and use tax shall not be imposed on the gross receipts from the sale, lease, or rental of depreciable agricultural machinery and equipment purchased, leased, or rented on or after January 1, 1993, for use in commercial agriculture. For purposes of this section, agricultural machinery and equipment excludes any current tractor model as defined in section 2-2701.01 not permitted for sale in Nebraska pursuant to sections 2-2701 to 2-2711.

Source: Laws 1992, Fourth Spec. Sess., LB 1, § 24; Laws 2004, LB 1017, § 17; Laws 2012, LB907, § 6.

77-2704.50 Railroad rolling stock; common or contract carrier; 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 from the purchase in this state or the purchase outside this state, with title passing in this state, of materials and replacement parts and any associated labor used as or used directly in the repair and maintenance or manufacture of railroad rolling stock, whether owned by a railroad or by any person, whether a common or contract carrier or otherwise, motor vehicles, watercraft, or aircraft engaged as common or contract carriers or the purchase in such manner of motor vehicles, watercraft, or aircraft to be used as common or contract carriers. All purchasers seeking to take advantage of the exemption shall apply to the Tax Commissioner for a common or contract carrier exemption. All common or contract carrier exemption certificates shall expire on October 31, 2013, and on October 31 every five years thereafter. All persons seeking to continue to take advantage of the common or contract carrier exemption shall apply for a new certificate at the expiration of the prior certificate. The Tax Commissioner shall notify such exemption certificate holders at least sixty days prior to the expiration date of such certificate that the certificate will expire and be null and void as of such date.

Source: Laws 2003, LB 282, § 65; Laws 2011, LB210, § 7.

77-2704.57 Personal property used in C-BED project or community-based energy development project; exemption; Tax Commissioner; powers and duties; Department of Revenue; recover tax not paid.

(1) 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. The Tax Commissioner may require the filing of the documents showing compliance with section 70-1907, the organization of the project, the distribution of the payments, the power purchase agreements, the project pro forma, articles of incorporation, operating agreements, and any amendments or changes to these documents during the life of the power purchase agreement.

(2) The Tax Commissioner shall notify an electric utility that has a power purchase agreement with a C-BED project if there is a change in project ownership which makes the project no longer eligible as a C-BED project. Purchase of a C-BED project by an electric utility prior to the end of the power purchase agreement disqualifies the C-BED project for the exemption, but the Department of Revenue may not recover the amount of the sales and use tax that was not paid by the project prior to the purchase.

(3) For purposes of this section, the terms (a) C-BED project or community-based energy development project, (b) gross power purchase agreement payments, (c) payments to the local community, and (d) qualified owner have the definitions found in section 70-1903.

(4) The Department of Revenue may examine the actual payments and the distribution of the payments to determine if the projected distributions were met. If the payment distributions to qualified owners do not meet the requirements of this section, the department may recover the amount of the sales or use tax that was not paid by the project at any time up until the end of three years after the end of the power purchase agreement.

(5) At any time prior to the end of the power purchase agreements, the project may voluntarily surrender the exemption granted by the Tax Commissioner and pay the amount of sales and use tax that would otherwise have been due.

(6) The amount of the tax due under either subsection (4) or (5) of this section shall be increased by interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date the tax would have been due if no exemption was granted until the date paid.

Source: Laws 2007, LB367, § 11; Laws 2008, LB916, § 21; Laws 2009, LB561, § 5; Laws 2010, LB888, § 103; Laws 2012, LB828, § 18; Laws 2013, LB283, § 5; Laws 2014, LB402, § 4.
Effective date July 18, 2014.

77-2704.61 Biochips; exemption.

(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 biochips used for the purposes of conducting genotyping or the analysis of gene expression, protein expression, genomic sequencing, or protein profiling of plants, animals, or nonhuman laboratory research model organisms.

(2) For purposes of this section, a biochip is a solid substrate upon or into which is incorporated specific genetic or protein information or chemicals that are queried through one or more chemical interactions allowing (a) an isolation of one or more single nucleotide polymorphisms which constitute an animal or

plant genotype, (b) an expression profile which measures activity of genes or the presence of proteins, or (c) a detailed genomic sequence or protein profile. The specific genetic or protein information or chemicals incorporated upon or into the biochip are consumed in the process of conducting the analysis.

Source: Laws 2012, LB830, § 3.

77-2704.62 Data center; 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 tangible personal property and services acquired by a person operating a data center located in this state that are assembled, engineered, processed, fabricated, manufactured into, attached to, or incorporated into other tangible personal property for the purpose of subsequent use at a physical location outside this state. Such exemption extends to keeping, retaining, or exercising any right or power over such tangible personal property in this state for the purpose of subsequently transporting it outside this state for use thereafter outside this state.

Source: Laws 2012, LB1080, § 5.

77-2704.63 Youth sports event, youth sports league, or youth competitive educational activity; exemption.

(1) Sales and use taxes shall not be imposed on the gross receipts from the sale, use, or other consumption of amounts charged to participate in a youth sports event, youth sports league, or youth competitive educational activity by political subdivisions or organizations that are exempt from income tax under section 501(c)(3) of the Internal Revenue Code.

(2) For purposes of this section:

(a) Competitive educational activity means a tournament or a single competition that occurs over a limited period of time annually or intermittently where the participants engage in a competitive educational activity;

(b) Sports event means a tournament or a single competition that occurs over a limited period of time annually or intermittently where the participants engage in a sport;

(c) Sports league means an organized series of sports competitions taking place over several weeks or months between teams or individuals that are members of the league; and

(d) Youth sports event, youth sports league, or youth competitive educational activity means an event, league, or activity that is restricted to participants who are less than nineteen years of age.

Source: Laws 2012, LB727, § 37.

77-2704.64 Repair or replacement parts for agricultural machinery and equipment used in commercial agriculture; 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

repair or replacement parts for agricultural machinery and equipment used in commercial agriculture.

Source: Laws 2014, LB96, § 3.

Operative date October 1, 2014.

77-2704.65 Historic automobile museum; exemption.

(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 purchases by any historic automobile museum of items which are displayed or held for display by such historic automobile museum and which are reasonably related to the general purpose of such historic automobile museum.

(2) For purposes of this section, historic automobile museum means a museum as defined in section 51-702 that:

(a) Is used to maintain and exhibit to the public a collection of at least one hundred fifty motor vehicles; and

(b) Was open to the public an average of four or more hours per week during the previous calendar year.

(3) A museum in its first year of existence may qualify as a historic automobile museum under this section without complying with subdivision (2)(b) of this section if all other requirements of subsection (2) of this section are met.

(4) If a museum that has claimed an exemption under this section fails to qualify as a historic automobile museum, such museum shall be subject to a deficiency determination under section 77-2709 and notice of such deficiency determination may be served or mailed within the applicable period provided in subdivision (5)(c) of section 77-2709.

Source: Laws 2014, LB867, § 13.

Operative date October 1, 2014.

77-2704.66 Currency or bullion; exemption.

(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 currency or bullion.

(2) For purposes of this section:

(a) Bullion means bars, ingots, or commemorative medallions of gold, silver, platinum, or palladium, or a combination of these, for which the value of the metal depends on its content and not the form; and

(b) Currency means a coin or currency made of gold, silver, or other metal or paper which is or has been used as legal tender.

Source: Laws 2014, LB867, § 14.

Operative date April 1, 2014.

77-2705.01 Direct payment permit; issuance; application; fee.

(1) The Tax Commissioner may issue direct payment permits to any person who annually purchases at least three million dollars of taxable property excluding purchases for which a resale certificate could be used.

(2) The applicant for a direct payment permit shall apply on a form prescribed by the Tax Commissioner. The applicant shall pay a nonrefundable fee of ten dollars for processing the application. The application shall include the

agreement of the applicant to accrue and pay to the Tax Commissioner on or before the twentieth day of the month following the date of purchase, lease, or rental all sales and use taxes on the taxable property purchased, leased, or rented by the applicant unless the items are exempt from taxation and the tax paid will be treated as a sales tax. The Tax Commissioner may require a description of the accounting methods by which an applicant will differentiate between taxable and exempt transactions.

(3) The Tax Commissioner may issue a direct payment permit to any applicant who meets the requirements of subsections (1) and (2) of this section. The direct payment permit shall become effective on the first day of the month following approval of an application. The decision of the Tax Commissioner under this section is not appealable. An applicant who is denied a direct payment permit may submit an amended application or reapply.

(4) A direct payment permit is not transferable.

(5) The holder of a direct payment permit is not entitled to any collection fee otherwise payable to those who collect and remit sales and use taxes.

Source: Laws 1997, LB 182A, § 4; Laws 2011, LB210, § 8.

77-2705.03 Direct payment permit; revocation; relinquishment.

(1) The holder of a direct payment permit holds the permit as a revocable privilege. The Tax Commissioner may revoke a direct payment permit. The Tax Commissioner shall mail notice of revocation to the permitholder. The decision of the Tax Commissioner to revoke a direct payment permit is not appealable.

(2) A permitholder may voluntarily relinquish a direct payment permit.

(3) Upon revocation or relinquishment of a direct payment permit, the permitholder shall notify all retailers given copies of the permit that it has been revoked or relinquished. Failure to give the notice shall be treated as a failure to pay sales and use taxes.

Source: Laws 1997, LB 182A, § 6; Laws 2012, LB727, § 40.

77-2705.04 Record of sales tax permits; electronic access; fees.

The record of sales tax permits maintained by the Department of Revenue may be made available electronically through the portal established under section 84-1204. There shall be a fee of five dollars and fifty cents for a monthly listing of all new sales tax permits. All fees collected pursuant to this section for electronic access to records through the portal shall be deposited in the Records Management Cash Fund and shall be distributed as provided in any agreements between the State Records Board and the department.

Source: Laws 1998, LB 924, § 29; Laws 2012, LB719, § 5.

77-2708 Sales and use tax; returns; date due; failure to file; penalty; deduction; amount; claim for refund; allowance; disallowance; proceedings.

(1)(a) The sales and use taxes imposed by the Nebraska Revenue Act of 1967 shall be due and payable to the Tax Commissioner monthly on or before the twentieth day of the month next succeeding each monthly period unless otherwise provided pursuant to the Nebraska Revenue Act of 1967.

(b)(i) On or before the twentieth day of the month following each monthly period or such other period as the Tax Commissioner may require, a return for

such period, along with all taxes due, shall be filed with the Tax Commissioner in such form and content as the Tax Commissioner may prescribe and containing such information as the Tax Commissioner deems necessary for the proper administration of the Nebraska Revenue Act of 1967. The Tax Commissioner, if he or she deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of sales or use taxes due, may require returns and payment of the amount of such taxes for periods other than monthly periods in the case of a particular seller, retailer, or purchaser, as the case may be. The Tax Commissioner shall by rule and regulation require reports and tax payments from sellers, retailers, or purchasers depending on their yearly tax liability. Except as required by the streamlined sales and use tax agreement, annual returns shall be required if such sellers', retailers', or purchasers' yearly tax liability is less than nine hundred dollars, quarterly returns shall be required if their yearly tax liability is nine hundred dollars or more and less than three thousand dollars, and monthly returns shall be required if their yearly tax liability is three thousand dollars or more. The Tax Commissioner shall have the discretion to allow an annual return for seasonal retailers, even when their yearly tax liability exceeds the amounts listed in this subdivision.

The Tax Commissioner may adopt and promulgate rules and regulations to allow annual, semiannual, or quarterly returns for any retailer making monthly remittances or payments of sales and use taxes by electronic funds transfer or for any retailer remitting tax to the state pursuant to the streamlined sales and use tax agreement. Such rules and regulations may establish a method of determining the amount of the payment that will result in substantially all of the tax liability being paid each quarter. At least once each year, the difference between the amount paid and the amount due shall be reconciled. If the difference is more than ten percent of the amount paid, a penalty of fifty percent of the unpaid amount shall be imposed.

(ii) For purposes of the sales tax, a return shall be filed by every retailer liable for collection from a purchaser and payment to the state of the tax, except that a combined sales tax return may be filed for all licensed locations which are subject to common ownership. For purposes of this subdivision, common ownership means the same person or persons own eighty percent or more of each licensed location. For purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person who has purchased property, the storage, use, or other consumption of which is subject to the use tax, but who has not paid the use tax due to a retailer required to collect the tax.

(iii) The Tax Commissioner may require that returns be signed by the person required to file the return or by his or her duly authorized agent but need not be verified by oath.

(iv) A taxpayer who keeps his or her regular books and records on a cash basis, an accrual basis, or any generally recognized accounting basis which correctly reflects the operation of the business may file the sales and use tax returns required by the Nebraska Revenue Act of 1967 on the same accounting basis that is used for the regular books and records, except that on credit, conditional, and installment sales, the retailer who keeps his or her books on an accrual basis may report such sales on the cash basis and pay the tax upon the collections made during each month. If a taxpayer transfers, sells, assigns, or otherwise disposes of an account receivable, he or she shall be deemed to have

received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported, except that such transfer, sale, assignment, or other disposition of an account receivable by a retailer to a subsidiary shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time the customer makes payment on such account. If the subsidiary does not obtain a Nebraska sales tax permit, the taxpayer shall obtain a surety bond in favor of the State of Nebraska to insure payment of the tax and any interest and penalty imposed thereon under this section in an amount not less than two times the amount of tax payable on outstanding accounts receivable held by the subsidiary as of the end of the prior calendar year. Failure to obtain either a sales tax permit or a surety bond in accordance with this section shall result in the payment on the next required filing date of all sales taxes not previously remitted. When the retailer has adopted one basis or the other of reporting credit, conditional, or installment sales and paying the tax thereon, he or she will not be permitted to change from that basis without first having notified the Tax Commissioner.

(c) Except as provided in the streamlined sales and use tax agreement, the taxpayer required to file the return shall deliver or mail any required return together with a remittance of the net amount of the tax due to the office of the Tax Commissioner on or before the required filing date. Failure to file the return, filing after the required filing date, failure to remit the net amount of the tax due, or remitting the net amount of the tax due after the required filing date shall be cause for a penalty, in addition to interest, of ten percent of the amount of tax not paid by the required filing date or twenty-five dollars, whichever is greater, unless the penalty is being collected under subdivision (1)(i), (1)(j)(i), or (1)(k)(i) of section 77-2703 by a county treasurer or the Department of Motor Vehicles, in which case the penalty shall be five dollars.

(d) The taxpayer shall deduct and withhold, from the taxes otherwise due from him or her on his or her tax return, two and one-half percent of the first three thousand dollars remitted each month to reimburse himself or herself for the cost of collecting the tax. Taxpayers filing a combined return as allowed by subdivision (1)(b)(ii) of this subsection shall compute such collection fees on the basis of the receipts and liability of each licensed location.

(2)(a) If the Tax Commissioner determines that any sales or use tax amount, penalty, or interest has been paid more than once, has been erroneously or illegally collected or computed, or has been paid and the purchaser qualifies for a refund under section 77-2708.01, the Tax Commissioner shall set forth that fact in his or her records and the excess amount collected or paid may be credited on any sales, use, or income tax amounts then due and payable from the person under the Nebraska Revenue Act of 1967. Any balance may be refunded to the person by whom it was paid or his or her successors, administrators, or executors.

(b) No refund shall be allowed unless a claim therefor is filed with the Tax Commissioner by the person who made the overpayment or his or her attorney, executor, or administrator within three years from the required filing date following the close of the period for which the overpayment was made, within six months after any determination becomes final under section 77-2709, or within six months from the date of overpayment with respect to such determinations, whichever of these three periods expires later, unless the credit relates to a period for which a waiver has been given. Failure to file a claim within the

time prescribed in this subsection shall constitute a waiver of any demand against the state on account of overpayment.

(c) Every claim shall be in writing on forms prescribed by the Tax Commissioner and shall state the specific amount and grounds upon which the claim is founded. No refund shall be made in any amount less than two dollars.

(d) The Tax Commissioner shall allow or disallow a claim within one hundred eighty days after it has been filed. A request for a hearing shall constitute a waiver of the one-hundred-eighty-day period. The claimant and the Tax Commissioner may also agree to extend the one-hundred-eighty-day period. If a hearing has not been requested and the Tax Commissioner has neither allowed nor disallowed a claim within either the one hundred eighty days or the period agreed to by the claimant and the Tax Commissioner, the claim shall be deemed to have been allowed.

(e) Within thirty days after disallowing any claim in whole or in part, the Tax Commissioner shall serve notice of his or her action on the claimant in the manner prescribed for service of notice of a deficiency determination.

(f) Within thirty days after the mailing of the notice of the Tax Commissioner's action upon a claim filed pursuant to the Nebraska Revenue Act of 1967, the action of the Tax Commissioner shall be final unless the taxpayer seeks review of the Tax Commissioner's determination as provided in section 77-27,127.

(g) Upon the allowance of a credit or refund of any sum erroneously or illegally assessed or collected, of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date such sum was paid or from the date the return was required to be filed, whichever date is later, to the date of the allowance of the refund or, in the case of a credit, to the due date of the amount against which the credit is allowed, but in the case of a voluntary and unrequested payment in excess of actual tax liability or a refund under section 77-2708.01, no interest shall be allowed when such excess is refunded or credited.

(h) No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed.

(i) The Tax Commissioner may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed by issuing a deficiency determination within one year from the date of refund or credit or within the period otherwise allowed for issuing a deficiency determination, whichever expires later.

(j)(i) Credit shall be allowed to the retailer, contractor, or repairperson for sales or use taxes paid pursuant to the Nebraska Revenue Act of 1967 on any deduction taken that is attributed to bad debts not including interest. Bad debt has the same meaning as in 26 U.S.C. 166, as such section existed on January 1, 2003. However, the amount calculated pursuant to 26 U.S.C. 166 shall be adjusted to exclude: Financing charges or interest; sales or use taxes charged on the purchase price; uncollectible amounts on property that remains in the possession of the seller until the full purchase price is paid; and expenses incurred in attempting to collect any debt and repossessed property.

(ii) Bad debts may be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. A claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

(iii) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

(iv) When the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within the otherwise applicable statute of limitations for refund claims. The statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.

(v) If filing responsibilities have been assumed by a certified service provider, the service provider may claim, on behalf of the retailer, any bad debt allowance provided by this section. The certified service provider shall credit or refund the full amount of any bad debt allowance or refund received to the retailer.

(vi) For purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

(vii) In situations in which the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the member states in the streamlined sales and use tax agreement, the state shall permit the allocation.

Source: Laws 1967, c. 487, § 8, p. 1558; Laws 1967, c. 490, § 5, p. 1665; Laws 1969, c. 683, § 5, p. 2635; Laws 1976, LB 996, § 1; Laws 1981, LB 179, § 15; Laws 1981, LB 167, § 51; Laws 1982, Spec. Sess., LB 2, § 1; Laws 1983, LB 101, § 1; Laws 1983, LB 571, § 2; Laws 1984, LB 758, § 1; Laws 1985, LB 715, § 7; Laws 1985, LB 273, § 46; Laws 1987, LB 775, § 15; Laws 1987, LB 523, § 16; Laws 1988, LB 1234, § 1; Laws 1991, LB 829, § 23; Laws 1992, LB 1063, § 183; Laws 1992, Second Spec. Sess., LB 1, § 156; Laws 1992, Fourth Spec. Sess., LB 1, § 28; Laws 1993, LB 128, § 1; Laws 1993, LB 345, § 56; Laws 1995, LB 9, § 1; Laws 1995, LB 118, § 1; Laws 1996, LB 1041, § 7; Laws 2002, Second Spec. Sess., LB 32, § 3; Laws 2003, LB 282, § 71; Laws 2005, LB 216, § 8; Laws 2008, LB916, § 25; Laws 2011, LB210, § 9; Laws 2012, LB801, § 99; Laws 2014, LB814, § 10.
Operative date October 1, 2014.

77-2708.01 Depreciable repairs or parts for agricultural machinery or equipment; refund of sales or use taxes; procedure.

(1) Any purchaser of depreciable repairs or parts for agricultural machinery or equipment used in commercial agriculture may apply for a refund of all of

the Nebraska sales or use taxes and all of the local option sales or use taxes paid prior to October 1, 2014, on the repairs or parts.

(2) The purchaser shall file a claim within three years after the date of purchase with the Tax Commissioner pursuant to section 77-2708. The information provided on a tax refund claim allowed under this section may be disclosed to any other tax official of this state.

Source: Laws 1992, LB 1063, § 181; Laws 1992, Second Spec. Sess., LB 1, § 154; Laws 1992, Fourth Spec. Sess., LB 1, § 29; Laws 1993, LB 345, § 57; Laws 2003, LB 282, § 72; Laws 2014, LB96, § 4. Operative date October 1, 2014.

77-2709 Sales and use tax; return; Tax Commissioner; deficiency determination; penalty; deficiency; notice; hearing; order.

(1) If the Tax Commissioner is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the state by any person, he or she may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his or her possession or which may come into his or her possession. One or more deficiency determinations of the amount due for one or more than one period may be made. To the amount of the deficiency determination for each period shall be added a penalty equal to ten percent thereof or twenty-five dollars, whichever is greater. In making a determination, the Tax Commissioner may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for other period or periods, against penalties, and against the interest on the underpayments.

The interest on underpayments and overpayments shall be computed in the manner set forth hereinafter.

(2) If any person fails to make a return, the Tax Commissioner shall make an estimate of the amount of the gross receipts of the person or, as the case may be, of the amount of the total sales, rent, or lease price of property sold, rented, or leased or purchased, by the person, the storage, use, or consumption of which in this state is subject to the use tax. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the Tax Commissioner's possession or may come into his or her possession. Upon the basis of this estimate, the Tax Commissioner shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to ten percent thereof or twenty-five dollars, whichever is greater. One or more determinations may be made for one or more than one period.

(3) The amount of the determination of any deficiency exclusive of penalties shall bear interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the twentieth of the month following the period for which the amount should have been returned until the date of payment.

(4) If any part of a deficiency for which a deficiency determination is made is the result of fraud or an intent to evade the Nebraska Revenue Act of 1967 or authorized rules and regulations, a penalty of twenty-five percent of the amount of the determination or fifty dollars, whichever is greater, shall be added thereto.

(5)(a) Promptly after making his or her determination, the Tax Commissioner shall give to the person written notice of his or her determination.

(b) The notice may be served personally or by mail, and if by mail the notice shall be addressed to the person at his or her address as it appears in the records of the Tax Commissioner. In case of service by mail of any notice required by the Nebraska Revenue Act of 1967, the service is complete at the time of deposit in the United States post office.

(c) Every notice of a deficiency determination shall be personally served or mailed within three years after the last day of the calendar month following the period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. In the case of a person failing to make a return, filing a false or fraudulent return with the intent to evade the sales or use tax, or omitting from a return an amount properly includable therein which is in excess of twenty-five percent of the amount of tax stated in the return, every notice of determination shall be mailed or personally served within six years after the last day of the calendar month following the period for which the amount is proposed to be determined.

(d) When, before the expiration of the time prescribed in this section for the mailing of a notice of deficiency determination, both the Tax Commissioner and the taxpayer have consented in writing to its mailing after such time, the notice of the deficiency determination may be mailed at any time prior to the expiration of the period agreed upon. The agreed-upon period may be extended by subsequent agreement, in writing, made before the expiration of the period previously agreed upon.

(6) When a business is discontinued, a determination may be made at any time thereafter within the periods specified in this section as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in the Nebraska Revenue Act of 1967.

(7) Any person against whom a determination is made under subsections (1) and (2) of this section or any person directly interested may petition for a redetermination within sixty days after service upon the person of notice thereof. For the purposes of this subsection, a person is directly interested in a deficiency determination when such deficiency could be collected from such person. If a petition for redetermination is not filed within the sixty-day period, the determination becomes final at the expiration of the period.

(8) If a petition for redetermination is filed within the sixty-day period, the Tax Commissioner shall reconsider the determination and, if the person has so requested in his or her petition, shall grant the person an oral hearing and shall give him or her ten days' notice of the time and place of the hearing. The Tax Commissioner may continue the hearing from time to time as may be necessary.

(9) The Tax Commissioner may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Tax Commissioner at or before the hearing, upon which assertion the petitioner shall be entitled to a thirty-day continuance of the hearing to allow him or her to obtain and produce further evidence applicable to the items upon which the increase is based.

(10) The order or decision of the Tax Commissioner upon a petition for redetermination shall become final thirty days after service upon the petitioner of notice thereof.

(11) All determinations made by the Tax Commissioner under the provisions of subsections (1) and (2) of this section are due and payable at the time they become final. If they are not paid when due and payable, a penalty of ten percent of the amount of the determination, exclusive of interest and penalties, shall be added thereto.

(12) Any notice required by this section shall be served personally or by mail in the manner prescribed in subsection (5) of this section.

Source: Laws 1967, c. 487, § 9, p. 1562; Laws 1969, c. 683, § 6, p. 2639; Laws 1976, LB 996, § 2; Laws 1981, LB 167, § 52; Laws 1985, LB 273, § 47; Laws 1992, Fourth Spec. Sess., LB 1, § 30; Laws 1993, LB 345, § 58; Laws 2008, LB914, § 7; Laws 2011, LB210, § 10; Laws 2014, LB851, § 12.

Operative date October 1, 2014.

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, (g) the disclosure of information pursuant to section 77-27,195 or 77-5731, or (h) the disclosure of information to the Department of Labor necessary for the administration of the Employment Security Law, the Contractor Registration Act, or the Employee Classification Act.

(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 81-3716 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 the Auditor of Public Accounts or employees of the office of Legislative Audit 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 the office of Legislative Audit shall disclose to any person, other than another Auditor of Public Accounts or office 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 office of Legislative Audit employee.

(12) For purposes of this subsection and subsections (11) and (14) 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. The Tax Commissioner may provide additional information to a municipality so long as the information does not include any data detailing the specific revenue, expenses, or operations of any particular business.

(14)(a) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner shall, upon written request, provide an individual certified under subdivision (b) of this subsection representing a municipality which has adopted the local option sales and use tax under the Local Option Revenue Act with confidential sales and use tax returns and sales and use tax return information regarding taxpayers that possess a sales tax permit and the amounts remitted by such permit holders at locations within the boundaries of the requesting municipality or with confidential business use tax returns and business use tax return information regarding taxpayers that file a Nebraska and Local Business Use Tax Return and the amounts remitted by such taxpayers at locations within the boundaries of the requesting municipality. Any written request pursuant to this subsection shall provide the Department of Revenue with no less than ten business days to prepare the sales and use tax returns and sales and use tax return information requested. Such returns and return information shall be viewed only upon the premises of the department.

(b) Each municipality that seeks to request information under subdivision (a) of this subsection shall certify to the Department of Revenue one individual who is authorized by such municipality to make such request and review the documents described in subdivision (a) of this subsection. The individual may be a municipal employee or an individual who contracts with the requesting municipality to provide financial, accounting, or other administrative services.

(c) No individual certified by a municipality pursuant to subdivision (b) of this subsection shall disclose to any person any information obtained pursuant to a review under this subsection. An individual certified by a municipality pursuant to subdivision (b) of this subsection shall remain subject to this subsection after he or she (i) is no longer certified or (ii) is no longer in the employment of or under contract with the certifying municipality.

(d) Any person who violates the provisions of this subsection shall be guilty of a Class I misdemeanor.

(e) The Department of Revenue shall not be held liable by any person for an impermissible disclosure by a municipality or any agent or employee thereof of any information obtained pursuant to a review under this subsection.

(15) 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 or interest on delinquent taxes specified in section 45-104.02, as such rate may from time to time be adjusted.

(16)(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 (16)(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; Laws 2008, LB914, § 8; Laws 2009, LB165, § 10; Laws 2010, LB563, § 14; Laws 2010, LB879, § 9; Laws 2012, LB209, § 1; Laws 2012, LB1053, § 25; Laws 2013, LB39, § 12; Laws 2014, LB867, § 15.

Operative date July 18, 2014.

Cross References

Contractor Registration Act, see section 48-2101.
Employee Classification Act, see section 48-2901.
Employment Security Law, see section 48-601.
Local Option Revenue Act, see section 77-27,148.
Nebraska Visitors Development Act, see section 81-3701.

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 31, 2010, 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 multi-state 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; Laws 2010, LB879, § 10; Laws 2011, LB211, § 6.

Cross References

Executive Board of the Legislative Council, see section 50-401.01.

(c) INCOME TAX

77-2715 Income tax; rate; credits; refund.

(1) A tax is hereby imposed for each taxable year on the entire income of every resident individual and on the income of every nonresident individual and partial-year resident individual which is derived from sources within this state, except that any individual who has additions to adjusted gross income pursuant to section 77-2716 of less than five thousand dollars shall not have an individual income tax liability after nonrefundable credits under the Nebraska Revenue Act of 1967 that exceeds his or her individual income tax liability before credits under the Internal Revenue Code of 1986.

(2)(a) For taxable years beginning or deemed to begin before January 1, 2014, the tax for each resident individual shall be a percentage of such individual's federal adjusted gross income as modified in sections 77-2716 and 77-2716.01, 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 act, shall be allowed as a reduction in the income tax due.

(b) For taxable years beginning or deemed to begin on or after January 1, 2014, the tax for each resident individual shall be a percentage of such individual's federal adjusted gross income as modified in sections 77-2716 and 77-2716.01, plus a percentage of the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by substituting Nebraska taxable income for federal taxable income and applying Nebraska rates to the result.

(3) The tax for each nonresident individual and partial-year resident individual shall be the portion of the tax imposed on resident individuals 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 subtracting from the liability to this state for a resident individual with the same total income the credit for personal exemptions and multiplying the result by a fraction, the numerator of which is the nonresident individual's or partial-year resident individual's Nebraska adjusted gross income as determined by section 77-2733 or 77-2733.01 and the denominator of which is his or her total federal adjusted gross income, after first adjusting each by the amounts provided in section 77-2716. If this determination attributes more or less tax than is reasonably attributable to income derived from sources within this state, the taxpayer may petition for or the Tax Commissioner may require the employment of any other method to attribute an amount of tax which is reasonable and equitable in the circumstances.

(4) The tax for each estate and trust, other than trusts taxed as corporations under the Internal Revenue Code of 1986, shall be as determined under section 77-2717.

(5) A refund shall be allowed to the extent that the income tax paid by the individual, estate, or trust for the taxable year exceeds the income tax payable, except that no refund shall be made in any amount less than two dollars.

Source: Laws 1967, c. 487, § 15, p. 1576; Laws 1969, c. 684, § 2, p. 2652; Laws 1972, LB 1367, § 2; Laws 1973, LB 526, § 1; Laws 1974, LB 632, § 1; Laws 1975, LB 430, § 1; Laws 1977, LB 30, § 1; Laws 1977, LB 219, § 1; Laws 1980, LB 44, § 1; Laws 1981, LB 197, § 1; Laws 1982, LB 799, § 5; Laws 1983, LB 124, § 8; Laws 1983, LB 363, § 2; Laws 1984, LB 372, § 15; Laws 1985, LB 273, § 49; Laws 1986, LB 1027, § 207; Laws 1987, LB 773, § 5; Laws 1987, LB 523, § 19; Laws 1989, LB 458, § 1; Laws 1989, LB 459, § 2; Laws 1993, LB 240, § 2; Laws 1994, LB 977, § 10; Laws 2013, LB308, § 1.

77-2715.01 Income and sales tax; Legislature; set rates; limitations; primary rate; Tax Rate Review Committee; members; meetings; report.

(1)(a) Commencing in 1987 the Legislature shall set the rates for the income tax imposed by section 77-2715 and the rate of the sales tax imposed by subsection (1) of section 77-2703. For taxable years beginning or deemed to begin before January 1, 2013, the rate of the income tax set by the Legislature shall be considered the primary rate for establishing the tax rate schedules used to compute the tax.

(b) The Legislature shall set the rates of the sales tax and income tax so that the estimated funds available plus estimated receipts from the sales, use, income, and franchise taxes will be not less than three percent nor more than seven percent in excess of the appropriations and express obligations for the biennium for which the appropriations are made. The purpose of this subdivision is to insure that there shall be maintained in the state treasury an adequate General Fund balance, considering cash flow, to meet the appropriations and express obligations of the state.

(c) For purposes of this section, express obligation shall mean an obligation which has fiscal impact identifiable by a sum certain or by an established percentage or other determinative factor or factors.

(2) The Speaker of the Legislature and the chairpersons of the Legislature's Executive Board, Revenue Committee, and Appropriations Committee shall constitute a committee to be known as the Tax Rate Review Committee. The Tax Rate Review Committee shall meet with the Tax Commissioner within ten days after July 15 and November 15 of each year and shall determine whether the rates for sales tax and income tax should be changed. In making such determination the committee shall recalculate the requirements pursuant to the formula set forth in subsection (1) of this section, taking into consideration the appropriations and express obligations for any session, all miscellaneous claims, deficiency bills, and all emergency appropriations. The committee shall prepare an annual report of its determinations under this section. The committee shall submit such report electronically to the Legislature and shall append the tax expenditure report required under section 77-382.

In the event it is determined by a majority vote of the committee that the rates must be changed as a result of a regular or special session or as a result of a change in the Internal Revenue Code of 1986 and amendments thereto, other provisions of the laws of the United States relating to federal income taxes, and the rules and regulations issued under such laws, the committee shall petition the Governor to call a special session of the Legislature to make whatever rate changes may be necessary.

Source: Laws 1969, c. 684, § 3, p. 2654; Laws 1971, LB 167, § 1; Laws 1973, LB 10, § 1; Laws 1975, LB 589, § 1; Laws 1975, Spec. Sess., LB 4, § 1; Laws 1976, LB 651, § 1; Laws 1978, LB 327, § 1; Laws 1982, LB 304, § 1; Laws 1982, LB 454, § 1; Laws 1982, LB 757, § 1; Laws 1982, LB 693, § 1; Laws 1983, LB 59, § 1; Laws 1983, LB 169, § 2; Laws 1983, LB 363, § 3; Laws 1984, LB 892, § 7; Laws 1985, LB 282, § 1; Laws 1986, LB 258, § 17; Laws 1987, LB 773, § 7; Laws 1988, LB 130, § 1; Laws 2012, LB962, § 2; Laws 2012, LB970, § 3.

77-2715.02 Rate schedules; established; other taxes; tax rate.

(1) 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, and before January 1, 2013, 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, and before January 1, 2013, 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.

(2) The tax rate schedules shall use the format set forth in this subsection.

A	B	C	D	E
Taxable income over	but not over	pay	plus	of the amount over

(3) For taxable years beginning or deemed to begin before January 1, 2013, 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.

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; Laws 2012, LB970, § 4.

77-2715.03 Individual income tax brackets and rates; Tax Commissioner; duties; tax tables; other taxes; tax rate.

(1) For taxable years beginning or deemed to begin on or after January 1, 2013, and before January 1, 2014, the following brackets and rates are hereby established for the Nebraska individual income tax:

Individual Income Tax Brackets and Rates

Bracket Number	Single Individuals	Married, Filing Jointly	Head of Household	Married, Filing Separate	Estates and Trusts	Tax Rate
1	\$0-2,399	\$0-4,799	\$0-4,499	\$0-2,399	\$0-499	2.46%
2	\$2,400-17,499	\$4,800-34,999	\$4,500-27,999	\$2,400-17,499	\$500-4,699	3.51%
3	\$17,500-26,999	\$35,000-53,999	\$28,000-39,999	\$17,500-26,999	\$4,700-15,149	5.01%
4	\$27,000 and Over	\$54,000 and Over	\$40,000 and Over	\$27,000 and Over	\$15,150 and Over	6.84%

(2) For taxable years beginning or deemed to begin on or after January 1, 2014, the following brackets and rates are hereby established for the Nebraska individual income tax:

Individual Income Tax Brackets and Rates

Bracket Number	Single Individuals	Married, Filing Jointly	Head of Household	Married, Filing Separate	Estates and Trusts	Tax Rate
1	\$0-2,999	\$0-5,999	\$0-5,599	\$0-2,999	\$0-499	2.46%
2	\$3,000-17,999	\$6,000-35,999	\$5,600-28,799	\$3,000-17,999	\$500-4,699	3.51%
3	\$18,000-28,999	\$36,000-57,999	\$28,800-42,999	\$18,000-28,999	\$4,700-15,149	5.01%
4	\$29,000 and Over	\$58,000 and Over	\$43,000 and Over	\$29,000 and Over	\$15,150 and Over	6.84%

(3)(a) For taxable years beginning or deemed to begin on or after January 1, 2015, the minimum and maximum dollar amounts for each income tax bracket provided in subsection (2) of this section shall be adjusted for inflation by the percentage determined under subdivision (3)(b) of this section. The rate applicable to any such income tax bracket shall not be changed as part of any adjustment under this subsection. The minimum and maximum dollar amounts for each income tax bracket as adjusted shall be rounded to the nearest ten-dollar amount. If the adjusted amount for any income tax bracket ends in a five, it shall be rounded up to the nearest ten-dollar amount.

(b) The Tax Commissioner shall adjust the income tax brackets by the percentage determined pursuant to the provisions of section 1(f) of the Internal Revenue Code of 1986, as amended, except that in section 1(f)(3)(B) of the code the year 2013 shall be substituted for the year 1992. For 2015, the Tax Commissioner shall then determine the percent change from the twelve months ending on August 31, 2013, to the twelve months ending on August 31, 2014, and in each subsequent year, from the twelve months ending on August 31, 2013, to the twelve months ending on August 31 of the year preceding the taxable year. The Tax Commissioner shall prescribe new tax rate schedules that apply in lieu of the schedules set forth in subsection (2) of this section.

(4) Whenever the tax brackets or tax rates are changed by the Legislature, the Tax Commissioner shall update the tax rate schedules to reflect the new tax brackets or tax rates and shall publish such updated schedules.

(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) For taxable years beginning or deemed to begin on or after January 1, 2013, the tax rate applied to other federal taxes included in the computation of the Nebraska individual income tax shall be 29.6 percent.

(7) 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 2012, LB970, § 5; Laws 2014, LB987, § 1.
Effective date July 18, 2014.

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 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 Angel Investment Tax Credit Act, 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;

(c) A credit for investment in a biodiesel facility as provided in section 77-27,236;

(d) A credit as provided in the New Markets Job Growth Investment Act; and

(e) A credit as provided in the Nebraska Job Creation and Mainstreet Revitalization Act.

(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;

(b) A credit to all estates and trusts for contributions to certified community betterment programs as provided in the Community Development Assistance Act; and

(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, 2009, under the Internal Revenue Code of 1986, as amended. The credit allowed for each partner, shareholder, member, or beneficiary of a partnership, corporation, limited liability company, or estate or trust qualifying for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act shall be equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount of tax credit distributed pursuant to subsection (4) of section 77-5211.

(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; Laws 2009, LB165, § 12; Laws 2011, LB389, § 12; Laws 2012, LB1128, § 22; Laws 2014, LB191, § 17.
Effective date July 18, 2014.

Cross References

Angel Investment Tax Credit Act, see section 77-6301.

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.

Nebraska Job Creation and Mainstreet Revitalization Act, see section 77-2901.

New Markets Job Growth Investment Act, see section 77-1101.

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.

(d) For purposes of subdivision (2)(c) of this section:

(i) Each participant in an employee stock ownership trust qualified under section 401(a) of the Internal Revenue Code of 1986, as amended, is a shareholder; and

(ii) Two persons shall be considered to be related when, under section 318 of the Internal Revenue Code of 1986, as amended, 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; Laws 2013, LB573, § 1.

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 Nebraska Uniform 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 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 five thousand dollars per married filing separate return or ten thousand dollars for any other return. With respect to a qualified rollover within the meaning of section 529 of the Internal Revenue Code from another state's plan, any interest, earnings, and state contributions received from the other state's educational savings plan which is qualified under section 529 of the code shall qualify for the reduction provided in this subdivision. For contributions by a custodian of a custodial account including rollovers from another custodial account, the reduction shall only apply to funds added to the custodial account after January 1, 2014.

(c) 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 invest-

ment 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 (5) of section 77-2715.07.

(13) For taxable years beginning or deemed to begin on or after January 1, 2015, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income shall be reduced by the amount received as benefits under the federal Social Security Act which are included in the federal adjusted gross income if:

(a) For taxpayers filing a married filing joint return, federal adjusted gross income is fifty-eight thousand dollars or less; or

(b) For taxpayers filing any other return, federal adjusted gross income is forty-three thousand dollars or less.

(14) For taxable years beginning or deemed to begin on or after January 1, 2015, under the Internal Revenue Code of 1986, as amended, an individual may make a one-time election within two calendar years after the date of his or her retirement from the military to exclude income received as a military retirement benefit by the individual to the extent included in federal adjusted gross income and as provided in this subsection. The individual may elect to exclude forty percent of his or her military retirement benefit income for seven consecutive taxable years beginning with the year in which the election is made or may elect to exclude fifteen percent of his or her military retirement benefit income for all taxable years beginning with the year in which he or she turns sixty-seven years of age. For purposes of this subsection, military retirement benefit means retirement benefits that are periodic payments attributable to service in the uniformed services of the United States for personal services performed by an individual prior to his or her retirement.

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 523, § 20; Laws 1987, LB 773, § 9; 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; Laws 2010, LB197, § 1; Laws 2010, LB888, § 104; Laws 2013, LB283, § 6; Laws 2013, LB296, § 1; Laws 2014, LB987, § 2.
Effective date July 18, 2014.

Cross References

Long-Term Care Savings Plan Act, see section 77-6101.

Nebraska Uniform Limited Liability Company Act, see section 21-101.

77-2717 Income tax; estates; trusts; rate; fiduciary return; contents; filing; state income tax; contents; credits.

(1)(a)(i) For taxable years beginning or deemed to begin before January 1, 2014, 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 (A) substituting Nebraska taxable income for federal taxable income, (B) 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 (C) 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 Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska Advantage Research and Development Act. A nonrefundable income tax credit shall be allowed for all resident estates and trusts as provided in the New Markets Job Growth Investment Act.

(ii) For taxable years beginning or deemed to begin on or after January 1, 2014, 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 tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by substituting Nebraska taxable income for federal taxable income and applying Nebraska rates to the result. 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 Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska Advantage Research and Development Act. A nonrefundable income tax credit shall be allowed for all

resident estates and trusts as provided in the Nebraska Job Creation and Mainstreet Revitalization Act and the New Markets Job Growth Investment 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 Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska Advantage Research and Development Act. A nonrefundable income tax credit shall be allowed for all nonresident estates and trusts as provided in the Nebraska Job Creation and Mainstreet Revitalization Act and the New Markets Job Growth Investment 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 Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Job Creation and Mainstreet Revitalization Act, and the New Markets Job Growth Investment 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 Angel Investment Tax Credit Act, the Nebraska

Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, the Nebraska Job Creation and Mainstreet Revitalization Act, and the New Markets Job Growth Investment 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. For taxable years beginning or deemed to begin before January 1, 2013, 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. For taxable years beginning or deemed to begin on or after January 1, 2013, the amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.03 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.

(8) For purposes of this section, any beneficiary of an estate or trust that is a grantor trust of a nonresident shall be disregarded and this section shall apply as though the nonresident grantor was the beneficiary.

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; Laws 2008, LB915, § 1; Laws 2011, LB389, § 13; Laws 2012, LB970, § 6; Laws 2012, LB1128, § 23; Laws 2013, LB308, § 2; Laws 2014, LB191, § 18.
Effective date July 18, 2014.

Cross References

Angel Investment Tax Credit Act, see section 77-6301.

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.

Nebraska Job Creation and Mainstreet Revitalization Act, see section 77-2901.

New Markets Job Growth Investment Act, see section 77-1101.

77-2727 Income tax; partnership; subject to act; credit.

(1) A partnership as such shall not be subject to the income tax imposed by the Nebraska Revenue Act of 1967. Persons or their authorized representatives carrying on business as partners shall be liable for the income tax imposed by the Nebraska Revenue Act of 1967 only in their separate or individual capacities.

(2) The partners of such partnership who are residents of this state or corporations shall include in their incomes their proportionate share of such partnership's income.

(3) If any partner of such partnership is a nonresident individual during any part of the partnership's reporting year, he or she shall file a Nebraska income tax return which shall include in Nebraska adjusted gross income that portion of the partnership's Nebraska income, as determined under the provisions of sections 77-2728 and 77-2729, allocable to his or her interest in the partnership and shall execute and forward to the partnership, on or before the original due date of the Nebraska partnership 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 attributable to sources in this state, and such agreement shall be attached to the partnership's Nebraska return for such reporting year.

(4)(a) Except as provided in subdivision (c) of this subsection, in the absence of the nonresident individual partner's executed agreement being attached to the Nebraska partnership return, the partnership shall remit a portion of such partner's income which was derived from or attributable to Nebraska sources with its Nebraska return for the reporting year. For tax years beginning or deemed to begin before January 1, 2013, 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 individual partner's share of the partnership income which was derived from or attributable to sources within this state. For tax years beginning or deemed to begin on or after January 1, 2013, the amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.03 multiplied by the nonresident individual partner's share of the partnership income which was derived from or attributable to sources within this state.

(b) Any amount remitted on behalf of any partner shall be allowed as a credit against the Nebraska income tax liability of the partner.

(c) Subdivision (a) of this subsection does not apply to a publicly traded partnership as defined by section 7704(b) of the Internal Revenue Code of 1986, as amended, that is treated as a partnership for the purposes of the code and that has agreed to file an annual information return with the Department of Revenue reporting the name, address, taxpayer identification number, and other information requested by the department of each unit holder with an income in the state in excess of five hundred dollars.

(5) The Tax Commissioner may allow a nonresident individual partner to not file a Nebraska income tax return if the nonresident individual partner's only

source of Nebraska income was his or her share of the partnership'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 partnership has remitted the amount required by subsection (4) of this section on behalf of such nonresident individual partner. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident individual partner.

(6) For purposes of this section, any partner that is a grantor trust of a nonresident shall be disregarded and this section shall apply as though the nonresident grantor was the partner.

Source: Laws 1967, c. 487, § 27, p. 1583; Laws 1973, LB 531, § 2; Laws 1985, LB 273, § 52; Laws 1991, LB 773, § 15; Laws 2005, LB 216, § 11; Laws 2008, LB915, § 2; Laws 2012, LB970, § 7.

77-2734.01 Small business corporation shareholders; limited liability company members; determination of income; credit; Tax Commissioner; powers; return; when required.

(1) Residents of Nebraska who are shareholders of a small business corporation having an election in effect under subchapter S of the Internal Revenue Code or who are members of a limited liability company organized pursuant to the Nebraska Uniform Limited Liability Company Act shall include in their Nebraska taxable income, to the extent includable in federal gross income, their proportionate share of such corporation's or limited liability company's federal income adjusted pursuant to this section. Income or loss from such corporation or limited liability company conducting a business, trade, profession, or occupation shall be included in the Nebraska taxable income of a shareholder or member who is a resident of this state to the extent of such shareholder's or member's proportionate share of the net income or loss from the conduct of such business, trade, profession, or occupation within this state, determined under subsection (2) of this section. A resident of Nebraska shall include in Nebraska taxable income fair compensation for services rendered to such corporation or limited liability company. Compensation actually paid shall be presumed to be fair unless it is apparent to the Tax Commissioner that such compensation is materially different from fair value for the services rendered or has been manipulated for tax avoidance purposes.

(2) The income of any small business corporation having an election in effect under subchapter S of the Internal Revenue Code or limited liability company organized pursuant to the Nebraska Uniform Limited Liability Company Act that is derived from or connected with Nebraska sources shall be determined in the following manner:

(a) If the small business corporation is a member of a unitary group, the small business corporation shall be deemed to be doing business within this state if any part of its income is derived from transactions with other members of the unitary group doing business within this state, and such corporation shall apportion its income by using the apportionment factor determined for the entire unitary group, including the small business corporation, under sections 77-2734.05 to 77-2734.15;

(b) If the small business corporation or limited liability company is not a member of a unitary group and is subject to tax in another state, it shall apportion its income under sections 77-2734.05 to 77-2734.15; and

(c) If the small business corporation or limited liability company is not subject to tax in another state, all of its income is derived from or connected with Nebraska sources.

(3) Nonresidents of Nebraska who are shareholders of such corporations or members of such limited liability companies shall file a Nebraska income tax return and shall include in Nebraska adjusted gross income their proportionate share of the corporation's or limited liability company's Nebraska income as determined under subsection (2) of this section.

(4) The nonresident shareholder or member shall execute and forward to the corporation or limited liability company before the filing of the corporation's or limited liability company's return an agreement which states he or she will file a Nebraska income tax return and pay the tax on the income derived from or connected with sources in this state, and such agreement shall be attached to the corporation's or limited liability company's Nebraska return for such taxable year.

(5) For taxable years beginning or deemed to begin before January 1, 2013, in the absence of the nonresident shareholder's or member's executed agreement being attached to the Nebraska return, the corporation or limited liability company shall remit with the return an amount equal to the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident shareholder's or member's share of the corporation's or limited liability company's income which was derived from or attributable to this state. For taxable years beginning or deemed to begin on or after January 1, 2013, in the absence of the nonresident shareholder's or member's executed agreement being attached to the Nebraska return, the corporation or limited liability company shall remit with the return an amount equal to the highest individual income tax rate determined under section 77-2715.03 multiplied by the nonresident shareholder's or member's share of the corporation's or limited liability company's income which was derived from or attributable to this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the shareholder or member.

(6) The Tax Commissioner may allow a nonresident individual shareholder or member to not file a Nebraska income tax return if the nonresident individual shareholder's or member's only source of Nebraska income was his or her share of the small business corporation's or limited liability company'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 small business corporation or limited liability company has remitted the amount required by subsection (5) of this section on behalf of such nonresident individual shareholder or member. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident individual shareholder or member.

(7) A small business corporation or limited liability company return shall be filed only if one or more of the shareholders of the corporation or members of the limited liability company are not residents of the State of Nebraska or if such corporation or limited liability company has income derived from sources outside this state.

(8) For purposes of this section, any shareholder or member of the corporation or limited liability company that is a grantor trust of a nonresident shall be

disregarded and this section shall apply as though the nonresident grantor was the shareholder or member.

Source: Laws 1984, LB 1124, § 4; Laws 1985, LB 273, § 54; Laws 1987, LB 523, § 23; Laws 1987, LB 773, § 18; Laws 1991, LB 773, § 16; Laws 1993, LB 121, § 508; Laws 2005, LB 216, § 12; Laws 2008, LB915, § 3; Laws 2010, LB888, § 105; Laws 2012, LB970, § 8; Laws 2013, LB283, § 7.

Cross References

Nebraska Uniform Limited Liability Company Act, see section 21-101.

77-2734.02 Corporate taxpayer; income tax rate; how determined.

(1) Except as provided in subsection (2) of this section, a tax is hereby imposed on the taxable income of every corporate taxpayer that is doing business in this state:

(a) For taxable years beginning or deemed to begin before January 1, 2013, at a rate equal to one hundred fifty and eight-tenths percent of the primary rate imposed on individuals under section 77-2701.01 on the first one hundred thousand dollars of taxable income and at the rate of two hundred eleven percent of such rate on all taxable income in excess of one hundred thousand dollars. The resultant rates shall be rounded to the nearest one hundredth of one percent; and

(b) For taxable years beginning or deemed to begin on or after January 1, 2013, at a rate equal to 5.58 percent on the first one hundred thousand dollars of taxable income and at the rate of 7.81 percent on all taxable income in excess of one hundred thousand dollars.

For corporate taxpayers with a fiscal year that does not coincide with the calendar year, the individual rate used for this subsection shall be the rate in effect on the first day, or the day deemed to be the first day, of the taxable year.

(2) An insurance company shall be subject to taxation at the lesser of the rate described in subsection (1) of this section or the rate of tax imposed by the state or country in which the insurance company is domiciled if the insurance company can establish to the satisfaction of the Tax Commissioner that it is domiciled in a state or country other than Nebraska that imposes on Nebraska domiciled insurance companies a retaliatory tax against the tax described in subsection (1) of this section.

(3) For a corporate taxpayer that is subject to tax in another state, its taxable income shall be the portion of the taxpayer's federal taxable income, as adjusted, that is determined to be connected with the taxpayer's operations in this state pursuant to sections 77-2734.05 to 77-2734.15.

(4) Each corporate taxpayer shall file only one income tax return for each taxable year.

Source: Laws 1984, LB 1124, § 5; Laws 1987, LB 773, § 19; Laws 1995, LB 300, § 2; Laws 2008, LB888, § 1; Laws 2012, LB970, § 9.

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 Author-

ity 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.

(7) There shall be allowed to corporate taxpayers a nonrefundable income tax credit as provided in the Nebraska Job Creation and Mainstreet Revitalization Act and the New Markets Job Growth Investment Act.

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; Laws 2012, LB1128, § 24; Laws 2014, LB191, § 19.
Effective date July 18, 2014.

Cross References

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.

Nebraska Job Creation and Mainstreet Revitalization Act, see section 77-2901.

New Markets Job Growth Investment Act, see section 77-1101.

77-2734.04 Income tax; terms, defined.

As used in sections 77-2734.01 to 77-2734.15, unless the context otherwise requires:

(1) Annual average amortized loan balance means the total of the ending monthly values in the tax year divided by the number of months in the tax year;

(2) Application service means computer-based services provided to customers over a network for a fee without selling, renting, leasing, licensing, or otherwise transferring computer software. Application service includes, but is not limited to, software as a service, platform as a service, or infrastructure as a service;

(3) Billing address means the location indicated in the books and records of the taxpayer as the address of record where the bill relating to the customer's account is mailed;

(4) Borrower located in this state means:

(a) A borrower who is engaged in a trade or business in this state; or

(b) A borrower whose billing address is in this state, but is not engaged in a trade or business in this state;

(5) Buyer includes a buyer, licensee, user, or person providing consideration for the use of an item or service;

(6) Commercial domicile means the principal place from which the trade or business of the taxpayer is directed or managed;

(7) Communications company means any entity that:

(a) Is:

(i) A telecommunications company as defined in section 86-119 that provides a telecommunications service as defined in section 86-121 or provides broadband, Internet, or video services as defined in section 86-593;

(ii) A communications company that provides 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, and 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 a voice over Internet protocol service or is classified by the Federal Communications Commission as enhanced or value added. The company may also provide video programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Video programming includes, but is not limited to, cable service as defined in 47 U.S.C. 522 and video programming services delivered by providers of commercial mobile radio service, as defined in 47 C.F.R. 20.3; or

(iii) A broadcast company that provides an over-the-air broadcast radio station or over-the-air broadcast television station; and

(b) Owns, operates, manages, or controls any plant or equipment used to furnish telecommunications service, communication services, broadband services, Internet service, or broadcast services directly or indirectly to the general

public at large and derives at least seventy percent of its gross sales for the current taxable year from the provision of these services. For purposes of the seventy-percent test, gross sales does not include interest, dividends, rents, royalties, capital gains, or ordinary gains from asset dispositions, other than in the normal course of business;

(8) Compensation means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services;

(9) Corporate taxpayer means any corporation that is not a part of a unitary business or the part of a unitary business, whether it is one or more corporations, that is doing business in this state. Corporate taxpayer does not include any corporation that has a valid election under subchapter S of the Internal Revenue Code or any financial institution as defined in section 77-3801;

(10) Corporation means all corporations and all other entities that are taxed as corporations under the Internal Revenue Code;

(11) Credit card means a credit card, debit card, purchase card, charge card, and travel or entertainment card;

(12) Doing business in this state means the exercise of the corporation's franchise in this state or the conduct of operations in this state that exceed the limitations provided in 15 U.S.C. 381 on a state imposing an income tax;

(13) Federal taxable income means the corporate taxpayer's federal taxable income as reported to the Internal Revenue Service or as subsequently changed or amended. Except as provided in subsection (5) or (6) of section 77-2716, no adjustment shall be allowed for a change from any election made or the method used in computing federal taxable income. An election to file a federal consolidated return shall not require the inclusion in any unitary group of a corporation that is not a part of the unitary business;

(14) Intangible property means all personal property which is not tangible personal property and includes, but is not limited to, patents, copyrights, trademarks, trade names, service names, franchises, licenses, royalties, processes, techniques, formulas, and technical know-how but excludes money;

(15) Loan means any extension of credit resulting from direct negotiations between the taxpayer and its customer or the purchase, in whole or in part, of an extension of credit from another person. Loan includes participations, syndications, and leases treated as loans for federal income tax purposes. Loan does not include properties treated as loans under section 595 of the Internal Revenue Code prior to its repeal by Public Law 104-188, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, noninterest bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit or other mortgage-backed or asset-backed security, and other similar items;

(16) Loan secured by real property means a loan or other obligation which, at the time the original loan or obligation was incurred or during the current taxable year, was secured by real property. A loan secured by real property includes an installment sales contract for real property;

(17) Loan secured by tangible personal property means a loan or other obligation which, at the time the original loan or obligation was incurred or

during the current taxable year, was secured by tangible personal property. A loan secured by tangible personal property includes an installment sales contract for tangible personal property;

(18) Loan servicing fee includes (a) fees or charges for originating and processing loan applications, including, but not limited to, prepaid interest and loan discounts, (b) fees or charges for collecting, tracking, and accounting for loan payments received, and (c) gross receipts from the sale of loan servicing rights;

(19) Participation means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral;

(20) Sales means all gross receipts of the taxpayer, except:

(a) Income from discharge of indebtedness;

(b) Amounts received from hedging transactions involving intangible assets;
or

(c) Net gains from marketable securities held for investment;

(21) Single economic unit means a business in which there is a sharing or exchange of value between the parts of the unit. A sharing or exchange of value occurs when the parts of the business are linked by (a) common management or (b) common operational resources that produce material (i) economies of scale, (ii) transfers of value, or (iii) flow of goods, capital, or services between the parts of the unit.

(A) For the purposes of this subdivision, common management includes, but is not limited to, (I) a centralized executive force or (II) review or approval authority over long-term operations with or without the exercise of control over the day-to-day operations.

(B) For the purposes of this subdivision, common operational resources includes, but is not limited to, centralization of any of the following: Accounting, advertising, engineering, financing, insurance, legal, personnel, pension or benefit plans, purchasing, research and development, selling, or union relations;

(22) State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof;

(23) Subject to the Internal Revenue Code means a corporation that meets the requirements of section 243 of the Internal Revenue Code in order for its distributions to qualify for the dividends-received deduction;

(24) Taxable income means federal taxable income as adjusted and, if appropriate, as apportioned;

(25) Taxable year means the period the corporate taxpayer used on its federal income tax return;

(26) Treasury function is the pooling, management, and investment of intangible assets to satisfy the cash-flow needs of the trade or business, including, but not limited to, providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, or business acquisitions. A taxpayer principally engaged in the trade or business of purchasing and selling intangible assets of the type typically held in a taxpayer's treasury function, such as a

registered broker-dealer, is not performing a treasury function with respect to income so produced;

(27) Unitary business means a business that is conducted as a single economic unit by one or more corporations with common ownership and shall include all activities in different lines of business that contribute to the single economic unit.

For the purposes of this subdivision, common ownership means one or more corporations owning fifty percent or more of another corporation; and

(28) Unitary group means the group of corporations that are conducting a unitary business.

Source: Laws 1984, LB 1124, § 7; Laws 1986, LB 774, § 10; Laws 1987, LB 773, § 20; Laws 2012, LB872, § 1.

77-2734.07 Income tax; adjustments to federal taxable income; rules and regulations.

(1) There shall be added to federal taxable income the amount of any federal deduction because of a carryforward of a net operating loss or any capital loss.

(2) There shall be allowed a deduction for a carryforward of a net operating loss or capital loss that is connected with operations in Nebraska. For a net operating loss or capital loss incurred in taxable years beginning or deemed to begin on or after January 1, 1987, and before January 1, 2014, the deduction shall be allowed only for each of the five taxable years succeeding the year of the loss. For a net operating loss incurred in taxable years beginning or deemed to begin on or after January 1, 2014, the deduction shall be allowed only for each of the twenty taxable years succeeding the year of the loss. For a capital loss incurred in taxable years beginning or deemed to begin on or after January 1, 2014, the deduction shall be allowed only for each of the five taxable years succeeding the year of the loss.

(3) Except as otherwise provided in this section, there shall be allowed a carryback of a net operating loss or a capital loss that is connected with operations in Nebraska. For a net operating loss or capital loss incurred in taxable years beginning or deemed to begin on or after January 1, 1987, no such carryback shall be allowed.

(4) The amounts in subsections (2) and (3) of this section shall be computed pursuant to rules and regulations adopted and promulgated by the Tax Commissioner. Such regulations shall be in accord with the laws of the United States regarding carryforwards and carrybacks.

Source: Laws 1984, LB 1124, § 10; Laws 1987, LB 772, § 4; Laws 2013, LB308, § 3.

77-2734.14 Income tax; sales factor; how determined.

(1) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales everywhere during the tax period.

(2) Sales of tangible personal property in this state include:

(a) Property delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale;

(b) Property shipped from an office, store, warehouse, factory, or other place of storage in this state if (i) the purchaser is the United States Government or (ii) for all taxable years beginning or deemed to begin before January 1, 1995, under the Internal Revenue Code of 1986, as amended, the taxpayer is not taxable in the state of the purchaser;

(c) For all taxable years beginning or deemed to begin on or after January 1, 1995, and before January 1, 1996, under the Internal Revenue Code of 1986, as amended, two-thirds of the property shipped from an office, store, warehouse, factory, or other place of storage in this state if the taxpayer is not taxable in the state of the purchaser; or

(d) For all taxable years beginning or deemed to begin on or after January 1, 1996, but before January 1, 1997, under the Internal Revenue Code of 1986, as amended, one-third of the property shipped from an office, store, warehouse, factory, or other place of storage in this state if the taxpayer is not taxable in the state of the purchaser.

(3) For sales other than sales of tangible personal property, except for sales as described in subsection (4) of this section:

(a) Sales of a service are in this state if the sales are derived from a buyer within this state. Sales of a service are derived from a buyer within this state if:

(i) The service, when rendered, relates to real property located in this state;

(ii) The service, when rendered, relates to tangible personal property located in this state at the time the service is received;

(iii) The service, when rendered, is provided to an individual physically present in this state at the time the service is received; or

(iv) The service, when rendered, is provided to a buyer engaged in a trade or business in this state and relates to that part of the trade or business then operated in this state. For services described in this subdivision, if the buyer uses the service within and without this state, calculated using any reasonable method, the sales are apportioned between the use in this state in proportion to the use of the service in this state and the other states;

(b) Sales of an application service are in this state if the buyer uses the application service in this state. The application service is used in this state if, the buyer, from a location in this state:

(i) Uses it in the regular course of business in this state; or

(ii) If the buyer is an individual, his or her billing address is in this state.

If the buyer is not an individual and uses the application service within and without this state, calculated using any reasonable method, the sales are apportioned between the use in this state in proportion to the use of the application service in this state and the other states. If the location of a sale cannot be determined, the sale of an application service is in the state from which the order was placed in the regular course of the customer's business. If that office cannot be determined, the sales are considered received at the customer's billing address;

(c) Sales of intangible property are in this state if the buyer uses the intangible property at a location in this state. If the buyer uses the intangible property within and without this state, the sales are apportioned between this state in proportion to the use of the intangible property in this state and the

other states. If the location of a sale cannot be determined, the sale of intangible property is in this state if the buyer's billing address is in this state;

(d) Interest, dividends, investment income, and other net gains from transactions in intangible assets held in connection with a treasury function, other than net gains from the sale or redemption of marketable securities, are in this state to the extent that it is included in taxable income and to the extent the investment, management, and record-keeping activities associated with corporate investments occur in this state;

(e) Gross interest, fees, points, charges, and penalties from loans, net gains from the sale of loans, and loan servicing fees derived from loans owned by the taxpayer or another person, including servicing participations, secured by real property or tangible personal property are in this state if the property securing the loan is located in this state. If the real or tangible personal property securing the loan is located within and without this state, the gross interest, fees, points, charges, and penalties from loans, net gains from the sale of loans, and loan servicing fees derived from loans owned by the taxpayer or another person, including servicing participations, are based upon the ratio of the annual average amortized loan balance of a loan secured by the real property or tangible personal property located in this state to the annual average amortized loan balance of a loan secured by the real property or tangible personal property located within and without this state;

(f) Gross interest, fees, points, charges, and penalties from loans, net gains from the sale of loans, and loan servicing fees derived from loans owned by the taxpayer or another person, including servicing participations, that are not secured by real or tangible personal property are in this state if the borrower is located in this state, which location shall be presumed to be the borrower's billing address;

(g) Gross interest, fees, points, charges, and penalties from credit card receivables and gross receipts from annual fees and other fees charged to credit card holders are in this state if the billing address of the credit card holder is in this state;

(h) Net gains, but not less than zero, from the sale of credit card receivables are in this state if the billing address of the credit card holder is in this state;

(i) Gross receipts from the lease, rental, or licensing of tangible personal property are in this state to the extent the property is located in this state;

(j) Gross receipts from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state; and

(k) Sales other than sales of tangible personal property not specifically addressed in this subsection must be sourced so as to fairly represent the extent of the taxpayer's business activity in this state. This requirement will be considered met in the following situations: (i) If the buyer is an individual, a sale is deemed to have occurred at the buyer's billing address; and (ii) if the buyer is not an individual and the sale is from an order placed in the regular course of the customer's business, the sale is deemed to have occurred in the state from which the order was placed and, if that place cannot be readily determined, the sale is deemed to have occurred at the customer's billing address.

(4) To continue the tax policy of this state which enhances the deployment of broadband in rural and underserved areas of this state, sales, other than sales

of tangible personal property, of a communications company are in this state if: (a) The income-producing activity is performed in this state; or (b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

Source: Laws 1984, LB 1124, § 17; Laws 1985, LB 273, § 58; Laws 1995, LB 559, § 1; Laws 2012, LB872, § 2.

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 in such form and content as the Tax Commissioner may prescribe and containing such information as the Tax Commissioner deems necessary for the proper administration of the Nebraska Revenue Act of 1967. 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 in such form and content as the Tax Commissioner may prescribe and containing such information as the Tax Commissioner deems necessary for the proper administration of the Nebraska Revenue Act of 1967. 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 February 1 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 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; Laws 2010, LB879, § 11.

77-2769.02 Repealed. Laws 2010, LB 879, § 29.

77-2776 Income tax; Tax Commissioner; return; examination; failure to file; notice; deficiency; notice.

(1) As soon as practical after an income tax return is filed, the Tax Commissioner shall examine it to determine the correct amount of tax. If the Tax Commissioner finds that the amount of tax shown on the return is less than the correct amount, he or she shall notify the taxpayer of the amount of the deficiency proposed to be assessed. If the Tax Commissioner finds that the tax paid is more than the correct amount, he or she shall credit the overpayment against any taxes due by the taxpayer and refund the difference. The Tax Commissioner shall, upon request, make prompt assessment of taxes due as provided by the laws of the United States for federal income tax purposes.

(2) If the taxpayer fails to file an income tax return, the Tax Commissioner shall estimate the taxpayer's tax liability from any available information and notify the taxpayer of the amount proposed to be assessed as in the case of a deficiency.

(3) A notice of deficiency shall set forth the reason for the proposed assessment or for the change in the amount of credit or loss to be carried over to another year. The notice may be mailed to the taxpayer at his or her last-known address. In the case of a joint return, the notice of deficiency may be a single joint notice, except that if the Tax Commissioner is notified by either spouse that separate residences have been established, the Tax Commissioner shall mail joint notices to each spouse. If the taxpayer is deceased or under a legal disability, a notice of deficiency may be mailed to his or her last-known address unless the Tax Commissioner has received notice of the existence of a fiduciary relationship with respect to such taxpayer.

(4) A notice of deficiency regarding an item of entity income may be mailed to the entity at its last-known address or to the address of the entity's tax matters person for federal income tax purposes. Such notice shall be deemed to have been received by each partner, shareholder, or member of such entity, but

only for items of entity income reported by the partner, shareholder, or member.

Source: Laws 1967, c. 487, § 76, p. 1604; Laws 2005, LB 216, § 16; Laws 2012, LB727, § 41.

77-2779 Income tax; notice of Tax Commissioner's determination; mailing; contents.

Notice of the Tax Commissioner's determination shall be mailed to the taxpayer and such notice shall set forth briefly the Tax Commissioner's findings of fact and the basis of decision in each case decided in whole or in part adversely to the taxpayer.

Source: Laws 1967, c. 487, § 79, p. 1605; Laws 2012, LB727, § 42.

77-2789 Income tax; failure to file return; penalty.

(1) In case of failure to file any income tax return required under the provisions of the Nebraska Revenue Act of 1967 on the date prescribed therefor, determined with regard to any extension of time for filing, unless it is shown that such failure is the result of reasonable cause and not the result of willful neglect, the Tax Commissioner may add to the amount required to be shown as tax on such return, five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For purposes of this section, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) In case of each failure to file a statement of payment to another person, including the duplicate statement of tax withheld on wages, on the date prescribed therefor, determined with regard to any extension of time for filing, unless it is shown that such failure is the result of reasonable cause and not willful neglect, the Tax Commissioner may assess a penalty against the person so failing to file the statement, in the amount of two dollars for each statement not so filed but the total amount imposed on the delinquent person for all such failure during any calendar year shall not exceed two thousand dollars.

(3) In case of failure to file any return for income tax withheld on the date prescribed therefor, determined with regard to any extension of time to file, the Tax Commissioner may add to the amount required to be shown as tax on such return twenty-five dollars or the amount determined under subsection (1) of this section, whichever is greater.

(4) All determinations made by the Tax Commissioner under subsection (3) of this section are due and payable at the time they become final. If they are not paid when final, a penalty of ten percent of the total amount due, exclusive of interest and other penalties, shall be added to the total amount due.

Source: Laws 1967, c. 487, § 89, p. 1610; Laws 1993, LB 345, § 68; Laws 2010, LB879, § 12.

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) or (4) 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 compa-

ny, 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 one and one-half 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; Laws 2008, LB1004, § 2; Laws 2010, LB879, § 13.

77-2793 Claim for credit or refund; limitation.

(1) A claim for credit or refund of an overpayment of any income tax imposed by the Nebraska Revenue Act of 1967 shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires later. A claim for credit or refund of a refundable credit shall be filed by the taxpayer within three years after the due date of the return for the year in which the refundable credit was allowable. No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in this subsection for the filing of a claim for credit or refund unless a claim for credit or refund is filed by the taxpayer within such period.

(2) If a claim for credit or refund of an overpayment or for credit or refund of a refundable credit is filed by the taxpayer during the applicable three-year period prescribed in subsection (1) of this section, the amount of the credit or refund shall not exceed the portion of the tax paid or any refundable credit allowable within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return if such return was

filed prior to the end of the extension of time. If a claim for credit or refund of an overpayment is not filed within the three-year period prescribed in subsection (1) of this section, but is filed within the two-year period prescribed in subsection (1) of this section, the amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim. If no claim is filed, the credit or refund shall not exceed the amount which would be allowable under either of the preceding sentences, as the case may be, if a claim was filed on the date the credit or refund is allowed.

(3) If an agreement for an extension of the period for assessment of income taxes is made within the period prescribed in subsection (1) of this section for the filing of a claim for credit or refund, the period for filing claim for credit or for making credit or refund if no claim is filed shall not expire prior to six months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof.

(4) If a taxpayer is required by subsection (1) of section 77-2775 to report a change or correction in federal adjusted gross income, taxable income, or tax liability reported on his or her federal income tax return, or to report a change or correction which is treated in the same manner as if it were an overpayment for federal income tax purposes, or to file an amended return with the Tax Commissioner, a claim for credit or refund of any resulting overpayment of tax shall be filed by the taxpayer within two years from the time the notice of such change or correction or such amended return was required to be filed with the Tax Commissioner. If the report or amended return is not filed within the sixty-day period specified in such subsection, interest on any resulting refund or credit shall cease to accrue after such sixtieth day. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal change, correction, or items amended on the taxpayer's amended federal income tax return. This subsection shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subsection.

(5)(a) If a taxpayer is required by subsection (2) of section 77-2775 to report a change or correction in the amount of income taxable or tax credit allowable in one or more states and such changes or corrections when reflected in the return filed under the Nebraska Revenue Act of 1967 as most recently amended would result in an overpayment of tax, a claim for credit or refund shall be filed by the taxpayer within the earlier of (i) two years from the time the notice of such change or correction or such amended return was required to be filed with the Tax Commissioner or (ii) ten years from the due date of the return.

(b) If the report or amended return is not filed within the sixty-day period specified in such subsection, interest on any resulting refund or credit shall cease to accrue after such sixtieth day. The amount of such credit or refund shall not exceed the lesser of (i) the reduction in tax attributable to the change or correction in the amount of income taxable or the credit allowable in such other state in the return filed under the Nebraska Revenue Act of 1967 or (ii) the increase in tax actually paid to such other state or states.

(c) This subsection shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subsection. This subsection shall apply to changes or corrections which become final on or after May 1, 1993.

(6) If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback derived from or connected with Nebraska sources, the claim may be made under rules and regulations prescribed by the Tax Commissioner consistent, to the extent possible under the Nebraska Revenue Act of 1967, with the laws of the United States.

(7) For purposes of this section and section 77-2795, a timely filed petition for redetermination shall be considered a claim for credit or refund filed on the date the notice of deficiency determination was mailed.

Source: Laws 1967, c. 487, § 93, p. 1614; Laws 1985, LB 273, § 66; Laws 1987, LB 773, § 26; Laws 1993, LB 345, § 70; Laws 2008, LB914, § 14; Laws 2014, LB851, § 13.
Operative date July 18, 2014.

77-2794 Income tax; overpayment; interest.

(1) Under regulations prescribed by the Tax Commissioner interest shall be allowed and paid at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, upon any overpayment in respect to the income tax imposed by the Nebraska Revenue Act of 1967.

(2) For purposes of this section:

(a) The date of overpayment shall be the last day prescribed for filing the original return of such tax;

(b) Any return filed before the last day prescribed for the filing thereof, determined without regard to any extension of time to file the return, shall be considered as filed on such last day;

(c) Any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid on the last day prescribed for filing the return for the taxable year to which such amount constitutes a credit or payment, determined without regard to any extension of time granted the taxpayer;

(d) If at the time an overpayment is to be refunded, the taxpayer also has a reported underpayment of the same tax in another year: (i) If the overpayment is for a taxable year ending before the year of underpayment, the overpayment shall be applied to reduce such underpayment as of the last day prescribed for filing the original return of such tax for the year of underpayment; (ii) if the overpayment is for a taxable year ending after the year of underpayment, the overpayment shall be applied to reduce such underpayment as of the last day prescribed for filing the original return of such tax for the year of overpayment; or (iii) if the overpayment is one for which interest is not allowed under this section, the overpayment shall be applied as of the date of the filing of the claim for refund; and interest shall be allowed for any remaining overpayment as provided in subdivision (a) of this subsection;

(e) The period of overpayment during which interest shall be allowed shall not include any period during which the overpayment continued due to the unreasonable delay by the taxpayer in filing the claim for refund. For this purpose, the burden of proof shall be on the taxpayer to show that a delay of more than ninety days after all of the facts required to prepare a correct claim for refund are available is not unreasonable; and

(f) The period of overpayment during which interest shall be allowed shall not include any period during which an agreement between the taxpayer and the Internal Revenue Service was not filed as required by subsection (6) of section 77-2786 and the first ninety days after such agreement is filed.

(3)(a) Except as provided in subdivision (b) of this subsection, if any overpayment of income tax imposed by the Nebraska Revenue Act of 1967 is refunded within ninety days after the last date prescribed, or permitted by extension of time, for filing the return of such tax or within ninety days after any original return, and any amended return filed to carry back a loss, was filed, whichever is later, no interest shall be allowed under this section on overpayment.

(b) If the Tax Commissioner approves and implements an electronic form or method for filing the return and the return is not filed electronically, no interest shall be allowed under this section on overpayment.

(c) In the case of amended returns filed for any reason other than to carry back a loss, interest shall be allowed as provided in subsection (1) of this section.

Source: Laws 1967, c. 487, § 94, p. 1616; Laws 1981, LB 167, § 54; Laws 1991, LB 240, § 3; Laws 1992, Fourth Spec. Sess., LB 1, § 38; Laws 1993, LB 345, § 71; Laws 1996, LB 1041, § 8; Laws 2004, LB 955, § 2; Laws 2008, LB915, § 5; Laws 2010, LB879, § 14.

77-2796 Income tax; Tax Commissioner; claim for refund; denial; notice.

If the Tax Commissioner disallows a claim for refund, he or she shall notify the taxpayer accordingly. The action of the Tax Commissioner denying a claim for refund is final upon the expiration of thirty days after the date when he or she mails notice of his or her action to the taxpayer unless within this period the taxpayer seeks review of the Tax Commissioner's determination as hereinafter provided.

Source: Laws 1967, c. 487, § 96, p. 1617; Laws 2008, LB914, § 15; Laws 2010, LB879, § 15.

77-27,100 Income tax; claim for refund; limitation.

The action authorized in section 77-2798 shall be filed within three years from the last date prescribed for filing the return or within one year from the date the tax was paid, or within thirty days after the denial of a claim for refund by the Tax Commissioner.

Source: Laws 1967, c. 487, § 100, p. 1617; Laws 2008, LB914, § 16; Laws 2010, LB879, § 16.

77-27,119 Income tax; Tax Commissioner; administer and enforce sections; prescribe forms; content; examination of return or report; uniform school district numbering system; audit by Auditor of Public Accounts or Legislative Auditor; wrongful disclosure; exception; penalty.

(1) The Tax Commissioner shall administer and enforce the income tax imposed by sections 77-2714 to 77-27,135, and he or she is authorized to conduct hearings, to adopt and promulgate such rules and regulations, and to require such facts and information to be reported as he or she may deem necessary to enforce the income tax provisions of such sections, except that such rules, regulations, and reports shall not be inconsistent with the laws of

this state or the laws of the United States. The Tax Commissioner may for enforcement and administrative purposes divide the state into a reasonable number of districts in which branch offices may be maintained.

(2)(a) The Tax Commissioner may prescribe the form and contents of any return or other document required to be filed under the income tax provisions. Such return or other document shall be compatible as to form and content with the return or document required by the laws of the United States. The form shall have a place where the taxpayer shall designate the high school district in which he or she lives and the county in which the high school district is headquartered. The Tax Commissioner shall adopt and promulgate such rules and regulations as may be necessary to insure compliance with this requirement.

(b) The State Department of Education, with the assistance and cooperation of the Department of Revenue, shall develop a uniform system for numbering all school districts in the state. Such system shall be consistent with the data processing needs of the Department of Revenue and shall be used for the school district identification required by subdivision (a) of this subsection.

(c) The proper filing of an income tax return shall consist of the submission of such form as prescribed by the Tax Commissioner or an exact facsimile thereof with sufficient information provided by the taxpayer on the face of the form from which to compute the actual tax liability. Each taxpayer shall include such taxpayer's correct social security number or state identification number and the school district identification number of the school district in which the taxpayer resides on the face of the form. A filing is deemed to occur when the required information is provided.

(3) The Tax Commissioner, for the purpose of ascertaining the correctness of any return or other document required to be filed under the income tax provisions, for the purpose of determining corporate income, individual income, and withholding tax due, or for the purpose of making an estimate of taxable income of any person, shall have the power to examine or to cause to have examined, by any agent or representative designated by him or her for that purpose, any books, papers, records, or memoranda bearing upon such matters and may by summons require the attendance of the person responsible for rendering such return or other document or remitting any tax, or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for his or her information, with power to administer oaths or affirmations to such person or persons.

(4) The time and place of examination pursuant to this section shall be such time and place as may be fixed by the Tax Commissioner and as are reasonable under the circumstances. In the case of a summons, the date fixed for appearance before the Tax Commissioner shall not be less than twenty days from the time of service of the summons.

(5) No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations.

(6) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Tax Commissioner, any officer or employee of the Tax Commissioner, any person engaged or retained by the Tax Commissioner on an independent contract basis, any person who pursuant to this section is permitted to inspect any report or return or to whom a copy, an

abstract, or a portion of any report or return is furnished, any employee of the State Treasurer or the Department of Administrative Services, or any other person to divulge, make known, or use in any manner the amount of income or any particulars set forth or disclosed in any report or return required except for the purpose of enforcing sections 77-2714 to 77-27,135. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Tax Commissioner in an action or proceeding under the provisions of the tax law to which he or she is a party or on behalf of any party to any action or proceeding under such sections when the reports or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of such reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing in this section shall be construed (a) to prohibit the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, personal representatives, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) to prohibit the inspection by the Attorney General, other legal representatives of the state, or a county attorney of the report or return of any taxpayer who brings an action to review the tax based thereon, against whom an action or proceeding for collection of tax has been instituted, or against whom an action, proceeding, or prosecution for failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced, (d) to prohibit furnishing to the Nebraska Workers' Compensation Court the names, addresses, and identification numbers of employers, and such information shall be furnished on request of the court, (e) to prohibit 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) to prohibit the disclosure of information pursuant to section 77-27,195, 77-4110, or 77-5731, (g) to prohibit the disclosure to the Public Employees Retirement Board of the addresses of individuals who are members of the retirement systems administered by the board, and such information shall be furnished to the board solely for purposes of its administration of the retirement systems upon written request, which request shall include the name and social security number of each individual for whom an address is requested, (h) to prohibit the disclosure of information to the Department of Labor necessary for the administration of the Employment Security Law, the Contractor Registration Act, or the Employee Classification Act, (i) to prohibit the disclosure to the Department of Motor Vehicles of tax return information pertaining to individuals, corporations, and businesses determined by the Department of Motor Vehicles to be delinquent in the payment of amounts due under agreements pursuant to the International Fuel Tax Agreement Act, and such disclosure shall be strictly limited to information necessary for the administration of the act, (j) to prohibit the disclosure under section 42-358.08, 43-512.06, or 43-3327 to any court-appointed individuals, the county attorney, any authorized attorney, or the Department of Health and Human Services of an absent parent's address, social security number, amount of income, health insurance information, and employer's name and address for the exclusive purpose of establishing and collecting child, spousal, or medical support, (k) to prohibit the disclosure of information to the Department of

Insurance, the Nebraska State Historical Society, or the State Historic Preservation Officer as necessary to carry out the Department of Revenue's responsibilities under the Nebraska Job Creation and Mainstreet Revitalization Act, or (l) to prohibit the disclosure to the Department of Insurance of information pertaining to authorization for, and use of, tax credits under the New Markets Job Growth Investment Act. Information so obtained shall be used for no other purpose. Any person who violates this subsection shall be guilty of a felony and shall upon conviction thereof be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned not more than five years, or be both so fined and imprisoned, in the discretion of the court and shall be assessed the costs of prosecution. If the offender is an officer or employee of the state, he or she shall be dismissed from office and be ineligible to hold any public office in this state for a period of two years thereafter.

(7) Reports and returns required to be filed under income tax provisions of sections 77-2714 to 77-27,135 shall be preserved until the Tax Commissioner orders them to be destroyed.

(8) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner may permit the Secretary of the Treasury of the United States or his or her delegates or the proper officer of any state imposing an income tax, or the authorized representative of either such officer, to inspect the income tax returns of any taxpayer or may furnish to such officer or his or her authorized representative an abstract of the return of income of any taxpayer or supply him or her with information concerning an item of income contained in any return or disclosed by the report of any investigation of the income or return of income of any taxpayer, but such permission shall be granted only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the Tax Commissioner of this state as the officer charged with the administration of the income tax imposed by sections 77-2714 to 77-27,135.

(9) Notwithstanding the provisions of subsection (6) 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.

(10)(a) Notwithstanding the provisions of subsection (6) 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 officers and employees of the Auditor of Public Accounts or employees of the office of Legislative Audit 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. The Auditor of Public Accounts or office of Legislative Audit shall statistically and randomly select the tax returns and tax return information to be audited based upon a computer tape provided by the Department of Revenue which contains only total population documents without specific identification of taxpayers. The Tax Commissioner shall have the authority to approve the statistical sampling method used by the Auditor of Public Accounts or office of Legislative

Audit. 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 officer or employee of the Auditor of Public Accounts or office of Legislative Audit employee shall disclose to any person, other than another officer or employee of the Auditor of Public Accounts or office of Legislative Audit 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 IV felony and, in the discretion of the court, may be assessed the costs of prosecution. The guilty officer or employee shall be dismissed from employment and be ineligible to hold any position of employment with the State of Nebraska for a period of two years thereafter. For purposes of this subsection, officer or employee shall include a former officer or employee of the Auditor of Public Accounts or former employee of the office of Legislative Audit.

(11) For purposes of subsections (10) through (13) of this section:

(a) Tax returns shall mean any tax or information return or claim for refund required by, provided for, or permitted under sections 77-2714 to 77-27,135 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;

(b) Return information shall mean:

(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) Disclosures shall mean the making known to any person in any manner a return or return information.

(12) The Auditor of Public Accounts or the Legislative Auditor shall (a) notify the Tax Commissioner in writing thirty days prior to the beginning of an audit of his or her intent to conduct an audit, (b) provide an audit plan, and (c) provide a list of the tax returns and tax return information identified for inspection during the audit.

(13) The Auditor of Public Accounts or the office of Legislative Audit shall, as a condition for receiving tax returns and tax return information: (a) Subject employees involved in the audit to the same confidential information safeguards and disclosure procedures as required of Department of Revenue employees; (b) establish and maintain a permanent system of standardized records with

respect to any request for tax returns or tax return information, the reason for such request, and the date of such request and any disclosure of the tax return or tax return information; (c) establish and maintain a secure area or place in the Department of Revenue in which the tax returns, tax return information, or audit workpapers shall be stored; (d) restrict access to the tax returns or tax return information only to persons whose duties or responsibilities require access; (e) provide such other safeguards as the Tax Commissioner determines to be necessary or appropriate to protect the confidentiality of the tax returns or tax return information; (f) provide a report to the Tax Commissioner which describes the procedures established and utilized by the Auditor of Public Accounts or office of Legislative Audit for insuring the confidentiality of tax returns, tax return information, and audit workpapers; and (g) upon completion of use of such returns or tax return information, return to the Tax Commissioner such returns or tax return information, along with any copies.

(14) The Tax Commissioner may permit other tax officials of this state to inspect the tax returns and reports filed under sections 77-2714 to 77-27,135, 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.

(15) The Tax Commissioner shall compile the school district information required by subsection (2) of this section. Insofar as it is possible, such compilation shall include, but not be limited to, the total adjusted gross income of each school district in the state. The Tax Commissioner shall adopt and promulgate such rules and regulations as may be necessary to insure that such compilation does not violate the confidentiality of any individual income tax return nor conflict with any other provisions of state or federal law.

Source: Laws 1967, c. 487, § 119, p. 1628; Laws 1969, c. 694, § 1, p. 2689; Laws 1971, LB 527, § 1; Laws 1971, LB 571, § 1; Laws 1973, LB 526, § 6; Laws 1979, LB 302, § 1; Laws 1981, LB 170, § 7; Laws 1984, LB 962, § 32; Laws 1985, LB 273, § 68; Laws 1985, LB 344, § 8; Laws 1985, LB 345, § 1; Laws 1989, LB 611, § 3; Laws 1990, LB 431, § 1; Laws 1991, LB 549, § 22; Laws 1993, LB 46, § 17; Laws 1993, LB 345, § 72; Laws 1997, LB 129, § 2; Laws 1997, LB 720, § 23; Laws 1997, LB 806, § 3; Laws 2002, LB 989, § 19; Laws 2005, LB 216, § 18; Laws 2005, LB 312, § 15; Laws 2006, LB 588, § 9; Laws 2006, LB 956, § 11; Laws 2008, LB915, § 6; Laws 2010, LB563, § 15; Laws 2010, LB879, § 17; Laws 2013, LB39, § 13; Laws 2014, LB191, § 20; Laws 2014, LB851, § 14.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB191, section 20, with LB851, section 14, to reflect all amendments.

Note: Changes made by LB191 became effective July 18, 2014. Changes made by LB851 became operative July 18, 2014.

Cross References

Contractor Registration Act, see section 48-2101.

Employee Classification Act, see section 48-2901.

Employment Security Law, see section 48-601.

International Fuel Tax Agreement Act, see section 66-1401.

Nebraska Job Creation and Mainstreet Revitalization Act, see section 77-2901.

New Markets Job Growth Investment Act, see section 77-1101.

77-27,119.04 Repealed. Laws 2013, LB 79, § 41.

(d) GENERAL PROVISIONS

77-27,130 Tax Commissioner; tax; deficiency; disallowed by court; effect; frivolous objections; damages.

(1) If the amount of a deficiency determined by the Tax Commissioner is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer without the making of a claim therefor or, if payment has not been made, shall be abated.

(2) If the deficiency determined by the Tax Commissioner is disallowed by the court of review, the taxpayer shall have his or her costs as they would be allowable under the provisions of section 77-27,129. If the deficiency is disallowed in part, the court in its discretion may award the taxpayer a proportionate part of his or her costs.

(3) An assessment of a proposed income deficiency by the Tax Commissioner shall become final upon the expiration of the period specified in section 77-2777 for filing a written protest against the proposed assessment if no such protest has been filed within the time provided or, if the protest provided in section 77-2778 has been filed, upon the expiration of time provided for filing a petition for judicial review, upon the final judgment of the reviewing court, or upon the rendering by the Tax Commissioner of a decision pursuant to the mandate of the reviewing court. Notwithstanding the foregoing, for the purpose of making a petition for the review of a determination of the Tax Commissioner, the determination shall be deemed final on the date the notice of decision is mailed to the taxpayer as provided in section 77-2779.

(4) If any person institutes proceedings merely for delay or raises frivolous objections to compliance with the Nebraska Revenue Act of 1967, the Tax Commissioner may apply to a judge of the district court for the county where such person resides for damages in an amount not in excess of five thousand dollars for each tax year to be awarded to the State of Nebraska for expenses incurred by the Tax Commissioner in securing compliance. Damages so awarded by the court shall be payable upon notice and demand by the Tax Commissioner and shall be collected in the same manner as delinquent taxes under such act.

Source: Laws 1967, c. 487, § 130, p. 1635; Laws 1984, LB 962, § 34; Laws 2012, LB727, § 43.

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:

(a) For transactions occurring on or after October 1, 2014, and before October 1, 2019, credit to the Game and Parks Commission Capital Maintenance Fund all of the proceeds of the sales and use taxes imposed pursuant to section 77-2703 on the sale or lease of motorboats as defined in section 37-1204, personal watercraft as defined in section 37-1204.01, all-terrain vehicles as defined in section 60-103, and utility-type vehicles as defined in section 60-135.01;

(b) 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; and

(c) For transactions occurring on or after July 1, 2013, and before July 1, 2033, of the proceeds of the sales and use taxes derived from transactions other than those listed in subdivisions (2)(a) and (b) of this section from a sales tax rate of one-quarter of one percent, credit monthly eighty-five percent to the State Highway Capital Improvement Fund and fifteen percent 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; Laws 2011, LB84, § 6; Laws 2014, LB814, § 11.

Operative date October 1, 2014.

77-27,135 Notice; how given.

Whenever any notice required to be given by the Tax Commissioner under the provisions of the Nebraska Revenue Act of 1967 may be given by mail, it shall be given by first-class, registered, or certified mail, return receipt requested.

Source: Laws 1967, c. 487, § 135, p. 1637; Laws 2012, LB727, § 44.

(e) GOVERNMENTAL SUBDIVISION AID

77-27,136 Repealed. Laws 2011, LB 383, § 9.

77-27,137.01 Repealed. Laws 2011, LB 383, § 9.

77-27,137.02 Repealed. Laws 2011, LB 383, § 9.

77-27,137.03 Repealed. Laws 2011, LB 383, § 9.

77-27,139 Repealed. Laws 2011, LB 383, § 9.

77-27,139.02 Aid to municipalities; terms, defined.

For purposes of sections 77-27,139.01 to 77-27,139.04:

(1) Average per capita property tax levy means the total property taxes levied by all incorporated municipalities in each population group for the immediately preceding fiscal year, except for the amount of property tax levies committed to provide for principal and interest payments on the indebtedness of all incorporated municipalities, divided by the current population of all incorporated municipalities as certified by the Department of Revenue pursuant to section 77-3,119. The average per capita property tax levy shall be calculated separately for each population group;

(2) Average property tax levy means the total property taxes levied by all incorporated municipalities for the prior year, except for the amount of property tax levies committed to provide for principal and interest payments on the indebtedness of all incorporated municipalities, divided by the total amount of valuation subject to property tax in all incorporated municipalities for the immediately preceding fiscal year;

(3) Population means the population of a municipality as determined in section 77-3,119; and

(4) Population group means one of three groupings of municipalities for which the aid established by sections 77-27,139.01 to 77-27,139.04 is calculated based on the average per capita property tax levy calculated separately for each group. The three population groups shall be (a) municipalities with a population of five thousand inhabitants or more, (b) municipalities with a population between eight hundred and five thousand inhabitants, and (c) municipalities with a population of eight hundred inhabitants or less.

Source: Laws 1996, LB 1177, § 2; Laws 1997, LB 269, § 54; Laws 2011, LB383, § 3.

77-27,139.03 Aid to municipalities; calculation of state aid.

(1) State aid provided to municipalities pursuant to sections 77-27,139.01 to 77-27,139.04 shall be calculated by determining the average property tax levy for operational purposes other than for principal and interest payments on the indebtedness of all incorporated municipalities. The Auditor of Public Accounts shall provide to the Department of Revenue a list of the bond and nonbond tax request amounts from the most recent budgets filed by incorporated municipalities. The information shall be used to calculate the bond and nonbond tax levies for aid purposes under this section. The auditor shall provide the information to the department by February 1 each year.

(2) Each municipality shall receive state aid from the Municipal Equalization Fund equal to (a) the product of the average per capita property tax of the appropriate population group multiplied by the current population of the municipality minus (b) the product of the average property tax levy multiplied by the certified valuation within the incorporated municipality, except that a municipality shall not receive any aid under this section if the calculation results in a negative number.

(3) If a municipal tax levy for operational purposes was less than the average property tax levy in the immediately preceding fiscal year, the state aid provided to such municipality shall be reduced by twenty percent for each one-cent increment the levy was below the average property tax levy but the reduction shall not exceed eighty percent.

(4) If the amount of money in the Municipal Equalization Fund is less than the total amount of state aid for all municipalities as required by the allocation formula in subsection (2) of this section, the money in the fund shall be allocated on a prorated basis to such municipalities. If the amount of money in the fund is more than the total amount of state aid for municipalities as required by the allocation formula, the excess money in the fund shall be credited to the General Fund.

Source: Laws 1996, LB 1177, § 3; Laws 1997, LB 269, § 55; Laws 1998, LB 989, § 5; Laws 1999, LB 141, § 10; Laws 2000, LB 968, § 72; Laws 2003, LB 622, § 1; Laws 2011, LB383, § 4; Laws 2012, LB1114, § 1.

(g) LOCAL OPTION REVENUE ACT

77-27,142 Incorporated municipalities; sales and use tax; authorized; election.

(1) Any incorporated municipality other than a city of the metropolitan class by ordinance of its governing body is hereby authorized to impose a sales and use tax of one-half percent, one percent, one and one-half percent, one and three-quarters percent, or two percent upon the same transactions that are sourced under the provisions of sections 77-2703.01 to 77-2703.04 within such incorporated municipality on which the State of Nebraska is authorized to impose a tax pursuant to the Nebraska Revenue Act of 1967, as amended from time to time. Any city of the metropolitan class by ordinance of its governing body is hereby authorized to impose a sales and use tax of one-half percent, one percent, or one and one-half percent upon the same transactions that are sourced under the provisions of sections 77-2703.01 to 77-2703.04 within such city of the metropolitan class on which the State of Nebraska is authorized to impose a tax pursuant to the Nebraska Revenue Act of 1967, as amended from time to time. No sales and use tax shall be imposed pursuant to this section until an election has been held and a majority of the qualified electors have approved such tax pursuant to sections 77-27,142.01 and 77-27,142.02.

(2)(a) Any incorporated municipality that proposes to impose a municipal sales and use tax at a rate greater than one and one-half percent or increase a municipal sales and use tax to a rate greater than one and one-half percent shall submit the question of such tax or increase at a primary or general election held within the incorporated municipality. The question shall be submitted upon an affirmative vote by at least seventy percent of all of the members of the governing body of the incorporated municipality.

(b) Any rate greater than one and one-half percent shall be used as follows:

(i) In a city of the primary class, up to fifteen percent of the proceeds from the rate in excess of one and one-half percent may be used for non-public infrastructure projects of an interlocal agreement or joint public agency agreement with another political subdivision within the municipality or the county in which the municipality is located, and the remaining proceeds shall be used for public infrastructure projects or voter-approved infrastructure related to an economic development program as defined in section 18-2705; and

(ii) In any incorporated municipality other than a city of the primary class, the proceeds from the rate in excess of one and one-half percent shall be used

for public infrastructure projects or voter-approved infrastructure related to an economic development program as defined in section 18-2705.

For purposes of this section, public infrastructure project means and includes, but is not limited to, any of the following projects, or any combination thereof: Public highways and bridges and municipal roads, streets, bridges, and sidewalks; solid waste management facilities; wastewater, storm water, and water treatment works and systems, water distribution facilities, and water resources projects, including, but not limited to, pumping stations, transmission lines, and mains and their appurtenances; hazardous waste disposal systems; resource recovery systems; airports; port facilities; buildings and capital equipment used in the operation of municipal government; convention and tourism facilities; redevelopment projects as defined in section 18-2103; mass transit and other transportation systems, including parking facilities; and equipment necessary for the provision of municipal services.

(c) Any rate greater than one and one-half percent shall terminate no more than ten years after its effective date or, if bonds are issued and the local option sales and use tax revenue is pledged for payment of such bonds, upon payment of such bonds and any refunding bonds, whichever date is later, except as provided in subdivision (2)(d) of this section.

(d) If a portion of the rate greater than one and one-half percent is stated in the ballot question as being imposed for the purpose of the interlocal agreement or joint public agency agreement described in subdivision (2)(b)(i) or subsection (3) of this section, and such portion is at least one-eighth percent, there shall be no termination date for the rate representing such portion rounded to the next higher one-quarter or one-half percent.

(e) Sections 13-518 to 13-522 apply to the revenue from any such tax or increase.

(3)(a) No municipal sales and use tax shall be imposed at a rate greater than one and one-half percent or increased to a rate greater than one and one-half percent unless the municipality is a party to an interlocal agreement pursuant to the Interlocal Cooperation Act or a joint public agency agreement pursuant to the Joint Public Agency Act with a political subdivision within the municipality or the county in which the municipality is located creating a separate legal or administrative entity relating to a public infrastructure project.

(b) Except as provided in subdivision (2)(b)(i) of this section, such interlocal agreement or joint public agency agreement shall contain provisions, including benchmarks, relating to the long-term development of unified governance of public infrastructure projects with respect to the parties. The Legislature may provide additional requirements for such agreements, including benchmarks, but such additional requirements shall not apply to any debt outstanding at the time the Legislature enacts such additional requirements. The separate legal or administrative entity created shall not be one that was in existence for one calendar year preceding the submission of the question of such tax or increase at a primary or general election held within the incorporated municipality.

(c) Any other public agency as defined in section 13-803 may be a party to such interlocal cooperation agreement or joint public agency agreement.

(d) A municipality is not required to use all of the additional revenue generated by a sales and use tax imposed at a rate greater than one and one-half percent or increased to a rate greater than one and one-half percent under

this subsection for the purposes of the interlocal cooperation agreement or joint public agency agreement set forth in this subsection.

(4) The provisions of subsections (2) and (3) of this section do not apply to the first one and one-half percent of a sales and use tax imposed by a municipality.

(5) Notwithstanding any provision of any municipal charter, any incorporated municipality or interlocal agency or joint public agency pursuant to an agreement as provided in subsection (3) of this section may issue bonds in one or more series for any municipal purpose and pay the principal of and interest on any such bonds by pledging receipts from the increase in the municipal sales and use taxes authorized by such municipality. Any municipality which has or may issue bonds under this section may dedicate a portion of its property tax levy authority as provided in section 77-3442 to meet debt service obligations under the bonds. For purposes of this subsection, bond means any evidence of indebtedness, including, but not limited to, bonds, notes including notes issued pending long-term financing arrangements, warrants, debentures, obligations under a loan agreement or a lease-purchase agreement, or any similar instrument or obligation.

Source: Laws 1969, c. 629, § 1, p. 2530; Laws 1978, LB 394, § 1; Laws 1978, LB 902, § 1; Laws 1979, LB 365, § 1; Laws 1981, LB 40, § 1; Laws 1985, LB 116, § 1; Laws 1986, LB 890, § 1; Laws 2003, LB 282, § 80; Laws 2012, LB357, § 1; Laws 2013, LB104, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.

Nebraska Revenue Act of 1967, see section 77-2701.

77-27,142.01 Incorporated municipalities; sales and use tax; modification; election required, when.

(1) The governing body of any incorporated municipality may submit the question of changing any terms and conditions of a sales and use tax previously authorized under section 77-27,142. Except as otherwise provided by section 77-27,142, the question of modification shall be submitted to the voters at any primary or general election or at a special election if the governing body submits a certified copy of the resolution proposing modification to the election commissioner or county clerk within the time prior to the primary, general, or special election prescribed in section 77-27,142.02.

(2) If the change imposes a sales and use tax at a rate greater than one and one-half percent or increases the sales and use tax to a rate greater than one and one-half percent, the question shall include, but not be limited to:

(a) The percentage increase of one-quarter percent or one-half percent in the sales and use tax rate;

(b) A list of reductions or elimination of other taxes or fees, if any;

(c) A description of the projects to be funded, in whole or in part, from the revenue collected, along with any savings or efficiencies resulting from the projects;

(d) The year or years within which the revenue will be collected and, if bonds will be issued with some or all of the revenue pledged for payment of such

bonds, a statement that the revenue will be collected until the payment in full of such bonds and any refunding bonds; and

(e)(i) The percentage of revenue collected to be used for the purposes of the interlocal agreement or joint public agency agreement as provided in subdivision (2)(b)(i) or subsection (3) of section 77-27,142; (ii) a statement of the overall purpose of the agreement which is the long-term development of unified governance of public infrastructure projects, if applicable; and (iii) the name of any other political subdivision which is a party to the agreement.

This subsection does not apply to the first one and one-half percent of a sales and use tax imposed by a municipality.

Source: Laws 1978, LB 394, § 2; Laws 1997, LB 182A, § 7; Laws 2009, LB501, § 4; Laws 2012, LB357, § 2; Laws 2013, LB104, § 2.

77-27,142.02 Incorporated municipalities; sales and use tax; election; question; effect.

Except as otherwise provided by subsection (2) of section 77-27,142, the power granted by section 77-27,142 shall not be exercised unless and until the question has been submitted at a primary, general, or special election held within the incorporated municipality and in which all qualified electors shall be entitled to vote on such question. The officials of the incorporated municipality shall order the submission of the question by submitting a certified copy of the resolution proposing the tax to the election commissioner or county clerk by March 1 for a primary election, by September 1 for a general election, or at least fifty days before a special election. Except as otherwise provided by subsection (2) of section 77-27,142.01, the question may include any terms and conditions set forth in the resolution proposing the tax, such as a termination date or the specific project or program for which the revenue received from such tax will be allocated, and shall include the following language: Shall the governing body of the incorporated municipality impose a sales and use tax upon the same transactions within such municipality on which the State of Nebraska is authorized to impose a tax? If a majority of the votes cast upon such question shall be in favor of such tax, then the governing body of such incorporated municipality shall be empowered as provided by section 77-27,142 and shall forthwith proceed to impose a tax pursuant to the Local Option Revenue Act. If a majority of those voting on the question shall be opposed to such tax, then the governing body of the incorporated municipality shall not impose such a tax.

Source: Laws 1978, LB 394, § 3; Laws 1985, LB 116, § 2; Laws 1986, LB 890, § 2; Laws 2009, LB501, § 5; Laws 2012, LB357, § 3.

77-27,143 Municipalities; sales and use tax laws; administration; termination; data bases; required.

(1) The administration of all sales and use taxes adopted under the Local Option Revenue Act shall be by the Tax Commissioner who may prescribe forms and adopt and promulgate reasonable rules and regulations in conformity with the act for the making of returns and for the ascertainment, assessment, and collection of taxes imposed under such act. The incorporated municipality shall furnish a certified copy of the adopting or repealing ordinance to the Tax Commissioner in accordance with such rules and regulations as he or she may adopt and promulgate. For ordinances passed after October 1, 1969, the

effective date shall be the first day of the next calendar quarter which is at least one hundred twenty days following receipt by the Tax Commissioner of the certified copy of the ordinance. The Tax Commissioner shall provide at least sixty days' notice of the change in tax to retailers. Notice shall be provided to retailers within the municipality. Notice to retailers may be provided through the web site of the Department of Revenue or by other electronic means.

(2) For ordinances containing a termination date and passed after October 1, 1986, the termination date shall be the first day of a calendar quarter. The incorporated municipality shall furnish a certified statement to the Tax Commissioner no more than one hundred eighty days and at least one hundred twenty days prior to the termination date that the termination date stated in the ordinance is still valid. If the certified statement is not furnished within the prescribed time, the tax shall remain in effect, and the Tax Commissioner shall continue to collect the tax until the first day of the calendar quarter which is at least one hundred twenty days after receipt of the certified statement notwithstanding the termination date stated in the ordinance. The Tax Commissioner shall provide at least sixty days' notice of the termination of the tax to retailers. Notice shall be provided to retailers within the municipality. Notice to retailers may be provided through the web site of the department or by other electronic means.

(3) For sales and use tax purposes only, local jurisdiction boundary changes apply only on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the Tax Commissioner and sixty days' notice to sellers.

(4) The state shall provide and maintain a data base that describes boundary changes for all local taxing jurisdictions. This data base shall include a description of any change and the effective date of the change for sales and use tax purposes.

(5) The state shall provide and maintain a data base of all sales and use tax rates for all of the local jurisdictions levying taxes within the state. For the identification of counties, cities, and villages, codes corresponding to the rates shall be provided according to Federal Information Processing Standards as developed by the National Institute of Standards and Technology.

(6) The state shall provide and maintain a data base that assigns each five-digit and nine-digit zip code within the state to the proper tax rates and jurisdictions. For purposes of the streamlined sales and use tax agreement, the data base shall apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine-digit zip code designation is not available for a street address or if a seller is unable to determine the nine-digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller has attempted to determine the nine-digit zip code designation by utilizing software approved by the governing board that makes this designation from the street address and the five-digit zip code applicable to a purchase.

(7) For purposes of the streamlined sales and use tax agreement, the state may provide address-based boundary data base records for assigning taxing jurisdictions and their associated rates which shall be in addition to the

requirements of subsection (6) of this section. The data base records shall be in the same approved format as the data base records pursuant to subsection (6) of this section and shall meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 119(a), as such act existed on January 1, 2003. The governing board may allow a member state to require sellers that register under the agreement to use an address-based boundary data base provided by that member state. If any member state develops an address-based boundary data base pursuant to the agreement, a seller or certified service provider may use those data base records in place of the five-digit and nine-digit zip code data base records provided for in subsection (6) of this section. If a seller or certified service provider is unable to determine the applicable rate and jurisdiction using an address-based boundary data base after exercising due diligence, the seller or certified service provider may apply the nine-digit zip code designation applicable to a purchase. If a nine-digit zip code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller or certified service provider has attempted to determine the tax rate and jurisdiction by utilizing software approved by the governing board that makes this assignment from the address and zip code information applicable to the purchase.

(8) The state may certify vendor-provided address-based boundary data bases for assigning tax rates and jurisdictions. The data bases shall be in the same approved format as the data base records pursuant to subsection (7) of this section and shall meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 119(a) as such act existed on January 1, 2003. If a state certifies a vendor-provided address-based boundary data base, a seller or certified service provider may use that data base in place of the data base provided for in subsection (6) or (7) of this section. Vendors providing address-based boundary data bases may request certification of their data bases from the governing board. Certification by the governing board does not replace the requirement that the data bases be certified by the states individually.

(9) Pursuant to the streamlined sales and use tax agreement, the state shall relieve retailers and certified service providers using data bases pursuant to subsection (6) or (7) of this section from liability to the state and local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the retailer or certified service provider relying on erroneous data provided by a member state on tax rates, boundaries, or taxing jurisdiction assignments. After providing adequate notice determined by the governing board, a member state that provides an address-based boundary data base for assigning taxing jurisdictions pursuant to subsection (7) or (8) of this section may cease providing liability relief for errors resulting from the reliance on the data base provided by the member state under the provisions of subsection (6) of this section. If a seller demonstrates that requiring the use of the address-based boundary data base would create an undue hardship, the state and the governing board may extend the relief of liability to such seller for a designated period of time.

(10) The data bases provided for in this section shall be in a downloadable format approved by the governing board pursuant to the streamlined sales and use tax agreement. The data bases may be directly provided by the state or provided by a vendor as designated by the state. A data base provided by a vendor as designated by a state shall be applicable to and subject to all provisions of this section. The data bases shall be provided at no cost to the user of the data base. The provisions of subsections (6) and (7) of this section do not apply when the purchased product is received by the purchaser at the business location of the seller.

(11) A seller that did not have a requirement to register in this state prior to registering pursuant to the agreement or a certified service provider shall not be required to collect sales or use taxes for a state until the first day of the calendar quarter commencing more than sixty days after the state has provided the data bases required by this section.

Source: Laws 1969, c. 629, § 2, p. 2530; Laws 1969, c. 683, § 8, p. 2644; Laws 1986, LB 890, § 4; Laws 2003, LB 282, § 81; Laws 2003, LB 381, § 4; Laws 2005, LB 274, § 277; Laws 2006, LB 887, § 5; Laws 2011, LB211, § 7.

77-27,144 Municipalities; sales and use tax; Tax Commissioner; collection; distribution; refunds; notice; deduction.

(1) 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.

(2) Deductions for a refund made pursuant to section 77-4105, 77-4106, 77-5725, or 77-5726 shall be delayed for one year after the refund has been made to the taxpayer. The Department of Revenue shall notify the municipality liable for a refund exceeding one thousand five hundred dollars of the pending refund, the amount of the refund, and the month in which the deduction will be made or begin, except that if the amount of a refund claimed under section 77-4105, 77-4106, 77-5725, or 77-5726 exceeds twenty-five percent of the municipality's total sales and use tax receipts, net of any refunds or sales tax collection fees, for the municipality's prior fiscal year, the department shall deduct the refund over the period of one year in equal monthly amounts beginning after the one-year notification period required by this subsection. This subsection applies to refunds owed by cities of the first class, cities of the second class, and villages. This subsection applies to refunds beginning January 1, 2014.

(3) 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 subsection (13) of section 77-2711 and may certify an individual to request and review confidential sales

and use tax returns and sales and use tax return information as provided in subsection (14) of 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; Laws 2012, LB209, § 2; Laws 2014, LB867, § 16; Laws 2014, LB1067, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB867, section 16, with LB1067, section 1, to reflect all amendments.

Note: Changes made by LB1067 became operative April 10, 2014. Changes made by LB867 became operative July 18, 2014.

(h) AIR AND WATER POLLUTION CONTROL TAX REFUND ACT

77-27,150 Refund; application; when; contents; hearing; approval.

(1) An application for a refund of Nebraska sales and use taxes paid for any air or water pollution control facility may be filed with the Tax Commissioner by the owner of such facility in such manner and in such form as may be prescribed by the commissioner. The application for a refund shall contain: (a) Plans and specifications of such facility including all materials incorporated therein; (b) a descriptive list of all equipment acquired by the applicant for the purpose of industrial or agricultural waste pollution control; (c) the proposed operating procedure for the facility; (d) the acquisition cost of the facility for which a refund is claimed; and (e) a copy of the final findings of the Department of Environmental Quality issued pursuant to section 77-27,151.

(2) The Tax Commissioner shall offer an applicant a hearing upon request of such applicant. The hearing shall not affect the authority of the Department of Environmental Quality to determine whether or not industrial or agricultural waste pollution control exists within the meaning of the Air and Water Pollution Control Tax Refund Act.

(3) A claim for refund received without a copy of the final findings of the Department of Environmental Quality issued pursuant to section 77-27,151 shall not be considered a valid claim and shall be returned to the applicant.

(4) Notice of the Tax Commissioner's refusal to issue a refund shall be mailed to the applicant.

Source: Laws 1972, LB 716, § 2; Laws 1974, LB 820, § 4; Laws 1977, LB 308, § 1; Laws 1978, LB 244, § 1; Laws 1993, LB 3, § 43; Laws 2002, LB 989, § 20; Laws 2012, LB727, § 45.

77-27,152 Refund; notice; modify or revoke; when; effect.

(1) The Tax Commissioner, after giving notice by mail to the applicant and giving an opportunity for a hearing, shall modify or revoke the refund whenever the following appears: (a) The refund was obtained by fraud or misrepresentation regarding the payment of tax on materials incorporated into the facility or facilities; or (b) the Department of Environmental Quality has modified its findings regarding the facility covered by the refund.

(2) The Department of Environmental Quality may modify its findings when it determines any of the following: (a) The refund was obtained by fraud or misrepresentation regarding the facility or planned operation of the facility; (b) the applicant has failed substantially to operate the facility for the purpose and degree of control specified in the application or an amended application; or (c)

the facility covered by the refund is no longer used for the primary purpose of pollution control.

(3) On the mailing to the refund applicant of notice of the action of the Tax Commissioner modifying or revoking the refund, the refund shall cease to be in force or shall remain in force only as modified. When a refund is revoked because a refund was obtained by fraud or misrepresentation, all taxes which would have been payable if no certificate had been issued shall be immediately due and payable with the maximum interest and penalties prescribed by the Nebraska Revenue Act of 1967. No statute of limitations shall operate in the event of fraud or misrepresentation.

Source: Laws 1972, LB 716, § 4; Laws 1977, LB 308, § 3; Laws 1993, LB 3, § 45; Laws 2002, LB 989, § 22; Laws 2012, LB727, § 46.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

(j) SETOFF FOR CHILD, SPOUSAL, AND MEDICAL SUPPORT DEBTS

77-27,165 Notice of claim to debtor; contents.

The Department of Health and Human Services shall send notification to the debtor of the assertion of the department's rights, or of the rights of an individual not eligible as a public assistance recipient, to all or a portion of the debtor's income tax refund. The notice shall contain the procedures available to the debtor for protesting the offset, the debtor's opportunity to give written notice of intent to contest the validity of the claim before the department within thirty days of the date of mailing the notice, and the defenses the debtor may raise. The debt shall be certified by the department through a preoffset review.

Source: Laws 1984, LB 845, § 11; Laws 1996, LB 1044, § 802; Laws 1997, LB 307, § 203; Laws 2010, LB849, § 29.

(m) NEBRASKA ADVANTAGE RURAL DEVELOPMENT ACT

77-27,187 Act, how cited.

Sections 77-27,187 to 77-27,195 shall be known and may be cited as the Nebraska Advantage Rural Development Act.

Source: Laws 1986, LB 1124, § 1; Laws 1987, LB 270, § 1; Laws 1997, LB 886, § 1; Laws 1998, LB 1104, § 14; Laws 2002, LB 93, § 19; Laws 2003, LB 608, § 1; Laws 2005, LB 312, § 16; Laws 2009, LB403, § 8; Laws 2014, LB836, § 1.
Effective date July 18, 2014.

77-27,187.02 Application; contents; fee; 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 Incentives Fund. 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, city, or village.

(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, three million dollars in each of fiscal years 2006-07 through 2008-09, and four million dollars in fiscal year 2009-10. For applications filed in calendar years 2010 and 2011, the Tax Commissioner shall not approve further applications once the expected credits from the approved projects total four million dollars. For applications filed in calendar year 2012 and each year thereafter, the Tax Commissioner shall not approve further applications once the expected credits from the approved projects total one million dollars. 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. It is the intent of the Legislature that all tax credits deemed unallocated for this section for calendar year 2011 shall be used for purposes of the Angel Investment Tax Credit Act.

(c) Applications for benefits shall be considered in the order in which they are received.

(d)(i) For applications filed in calendar year 2011, applications shall be filed by July 1 and shall be complete by August 1 of the calendar year. Any application that is filed after July 1 or that is not complete on August 1 shall be considered to be filed during the following calendar year.

(ii) For applications filed in calendar year 2012 and each year thereafter, 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; Laws 2008, LB895, § 3; Laws 2008, LB914, § 17; Laws 2009, LB164, § 2; Laws 2011, LB389, § 14.

Cross References

Angel Investment Tax Credit Act, see section 77-6301.

77-27,187.03 Legislative findings.

The Legislature hereby finds and declares that it is the policy of this state to make revisions in Nebraska's tax structure to encourage businesses to locate in rural areas of Nebraska in order to decrease unemployment, create new jobs, and increase investment in rural areas of the state. It is also the policy of this state to encourage the modernization of livestock facilities.

Source: Laws 2014, LB836, § 2.
Effective date July 18, 2014.

77-27,195 Report; contents; joint hearing.

(1) The Tax Commissioner shall prepare a report identifying the amount of investment in this state and the number of equivalent jobs created by each taxpayer claiming a credit pursuant to the Nebraska Advantage Rural Development Act. The report shall include the amount of credits claimed in the aggregate. The report shall be issued on or before July 15 of each year for all credits allowed during the previous calendar year. The Department of Revenue shall, on or before September 1 of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

(2) Beginning with applications filed on or after January 1, 2006, except for livestock modernization or expansion projects, the report shall provide information on project-specific total incentives used every two years for each approved project and shall disclose (a) the identity of the taxpayer, (b) the location of the project, and (c) the total credits used and refunds approved during the immediately preceding two years expressed as a single, aggregated total. The incentive information required to be reported under this subsection shall not be reported for the first year the taxpayer attains the required employment and investment thresholds. The information on first-year incentives used shall be combined with and reported as part of the second year. Thereafter, the information on incentives used for succeeding years shall be reported for each project every two years containing information on two years of credits used and refunds approved. The incentives used shall include incen-

tives which have been approved by the Department of Revenue, but not necessarily received, during the previous two calendar years.

(3) For livestock modernization or expansion projects, the report shall disclose (a) the identity of the taxpayer, (b) the total credits used and refunds approved during the preceding calendar year, and (c) the location of the project.

(4) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 1986, LB 1124, § 9; Laws 1993, LB 725, § 19; Laws 1997, LB 886, § 9; Laws 2003, LB 608, § 11; Laws 2005, LB 312, § 22; Laws 2006, LB 990, § 7; Laws 2013, LB612, § 3.

(s) RENEWABLE ENERGY TAX CREDIT

77-27,235 Renewable energy tax credit; Department of Revenue; powers.

(1) Any producer of electricity generated by a new renewable electric generation 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 renewable electric generation 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 renewable electric generation 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 renewable electric generation facility. For electricity generated on or after January 1, 2013, the credit shall be .05 cent per kilowatt-hour for electricity generated by a new renewable electric generation 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 renewable electric generation facility means electricity that is exclusively produced by a new renewable electric generation facility;

(b) Eligible renewable resources means wind, moving water, solar, geothermal, fuel cell, methane gas, or photovoltaic technology; and

(c) New renewable electric generation 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.

(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 new renewable electric generation 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 total amount of renewable energy tax credits that may be used by all taxpayers shall be limited to fifty thousand dollars without further authorization from the Legislature.

(6) 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 renewable electric generation facility.

Source: Laws 2006, LB 872, § 2; Laws 2007, LB367, § 24; Laws 2011, LB360, § 3.

ARTICLE 29

NEBRASKA JOB CREATION AND MAINSTREET REVITALIZATION ACT

Section

- 77-2901. Act, how cited.
 77-2902. Terms, defined.
 77-2903. Local preservation ordinance or resolution; approval.
 77-2904. Credit; amount; claim; approval; procedure.
 77-2905. Application for credits; form; contents; officer; review; allocation of credits; notice of determination; denial; appeal; limit on credits; holder of allocation; duties.
 77-2906. Request for final approval; form; approval; when; denial; appeal; credit; issuance of certificates; fee; credit carried forward.
 77-2907. Fees.
 77-2908. Recapture of credits; written notice; procedure; amount.
 77-2909. Transfer, sale, or assignment of credit; limitation; use; notice; department; duties; powers.
 77-2910. Rules and regulations; Nebraska State Historical Society; Department of Revenue; joint report; contents.
 77-2911. Nebraska Job Creation and Mainstreet Revitalization Fund; created; use; investment.
 77-2912. Application deadline; allocation, issuance, or use of credits deadline.

77-2901 Act, how cited.

Sections 77-2901 to 77-2912 shall be known and may be cited as the Nebraska Job Creation and Mainstreet Revitalization Act.

Source: Laws 2014, LB191, § 1.
 Effective date July 18, 2014.

77-2902 Terms, defined.

For purposes of the Nebraska Job Creation and Mainstreet Revitalization Act:

- (1) Department means the Department of Revenue;
- (2) Eligible expenditure means any cost incurred for the improvement of historically significant real property located in the State of Nebraska, including, but not limited to, qualified rehabilitation expenditures as defined in section 47(c)(2) of the Internal Revenue Code of 1986, as amended, and the related regulations thereunder, if such improvement is in conformance with the standards;
- (3) Historically significant real property means a building or structure used for any purpose, except for a single-family detached residence, which, at the time of final approval of the work by the officer pursuant to section 77-2906, is:

- (a) Individually listed in the National Register of Historic Places;
- (b)(i) Located within a district listed in the National Register of Historic Places; and
- (ii) Determined by the officer as being historically significant to such district;
- (c)(i) Individually designated pursuant to a landmark ordinance or resolution enacted by a political subdivision of the state, which ordinance or resolution has been approved by the officer; and
- (ii) Determined by the officer as being historically significant; or
- (d)(i) Located within a district designated pursuant to a preservation ordinance or resolution enacted by a county, city, or village of the state or political body comprised thereof providing for the rehabilitation, preservation, or restoration of historically significant real property, which ordinance or resolution has been approved by the officer; and
- (ii) Determined by the officer as contributing to the historical significance of such district or to its economic viability;
- (4) Improvement means a rehabilitation, preservation, or restoration project that contributes to the basis, functionality, or value of the historically significant real property and has a total cost which equals or exceeds the following:
 - (a) For historically significant real property that is not located in a city of the metropolitan or primary class, twenty-five thousand dollars; or
 - (b) For historically significant real property that is located in a city of the metropolitan or primary class, the greater of (i) twenty-five thousand dollars or (ii) twenty-five percent of the historically significant real property's assessed value;
- (5) Officer means the State Historic Preservation Officer;
- (6) Person means any natural person, political subdivision, limited liability company, partnership, private domestic or private foreign corporation, or domestic or foreign nonprofit corporation certified pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended;
- (7) Placed in service means that either (a) a temporary or final certificate of occupancy has been issued for the improvement or (b) the improvement is sufficiently complete to allow for the intended use of the improvement; and
- (8) Standards means (a) the Secretary of the Interior's Standards for the Treatment of Historic Properties as promulgated by the United States Department of the Interior or (b) specific standards for the rehabilitation, preservation, and restoration of historically significant real property contained in a duly adopted local preservation ordinance or resolution that has been approved by the officer pursuant to section 77-2903.

Source: Laws 2014, LB191, § 2.
Effective date July 18, 2014.

77-2903 Local preservation ordinance or resolution; approval.

For purposes of establishing standards under subdivision (8)(b) of section 77-2902, the officer shall approve a duly adopted local preservation ordinance or resolution if such ordinance or resolution meets the following requirements:

(1) The ordinance or resolution provides for specific standards and requirements that reflect the heritage, values, and character of the political subdivision adopting such ordinance or resolution; and

(2) The ordinance or resolution requires that any building to be rehabilitated, preserved, or restored shall have been originally constructed at least fifty years prior to the proposed rehabilitation, preservation, or restoration and the facade of such building shall not have undergone material structural alteration since its original construction, unless the rehabilitation, preservation, or restoration to be performed proposes to restore the facade to substantially its original condition.

Source: Laws 2014, LB191, § 3.
Effective date July 18, 2014.

77-2904 Credit; amount; claim; approval; procedure.

(1) Any person incurring eligible expenditures may receive a nonrefundable credit against any income tax imposed by the Nebraska Revenue Act of 1967 or any tax imposed pursuant to sections 77-907 to 77-918 or 77-3801 to 77-3807 for the year the historically significant real property is placed in service. The amount of the credit shall be equal to twenty percent of eligible expenditures up to a maximum credit of one million dollars.

(2) To claim the credit authorized under this section, a person must first apply and receive an allocation of credits and application approval under section 77-2905 and then request and receive final approval under section 77-2906.

Source: Laws 2014, LB191, § 4.
Effective date July 18, 2014.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-2905 Application for credits; form; contents; officer; review; allocation of credits; notice of determination; denial; appeal; limit on credits; holder of allocation; duties.

(1) Prior to commencing work on the historically significant real property, a person shall file an application for credits under the Nebraska Job Creation and Mainstreet Revitalization Act containing all required information with the officer on a form prescribed by the officer and shall include an application fee established by the officer pursuant to section 77-2907. The officer shall not accept any application for credits prior to January 1, 2015. The application shall include plans and specifications, an estimate of the cost of the project prepared by a licensed architect, licensed engineer, or licensed contractor, and a request for a specific amount of credits based on such estimate. The officer shall review the application and, within twenty-one days after receiving the application, shall determine whether the information contained therein is complete. The officer shall notify the applicant in writing of the determination within five business days after making the determination. If the officer fails to provide such notification as required, the application shall be deemed complete as of the twenty-first day after the application is received by the officer. If the officer determines the application is complete or if the application is deemed complete pursuant to this section, the officer shall reserve for the benefit of the

applicant an allocation of credits in the amount specified in the application and determined by the officer to be reasonable and shall notify the applicant in writing of the amount of the allocation. The allocation does not entitle the applicant to an issuance of credits until the applicant complies with all other requirements of the Nebraska Job Creation and Mainstreet Revitalization Act for the issuance of credits. The date the officer determines the application is complete or the date the application is deemed complete pursuant to this section shall constitute the applicant's priority date for purposes of allocating credits under this section. For complete applications receiving an allocation under this section, the officer shall determine whether the application conforms to the standards, and, if so, the officer shall approve such application or approve such application with conditions. If the application does not conform to the standards, the officer shall deny such application. The officer shall promptly provide the person filing the application and the department with written notice of the officer's determination. If the officer does not provide a written notice of his or her determination within thirty days after the date the application is determined or deemed to be complete pursuant to this section, the application shall be deemed approved. The officer shall notify the department of any applications that are deemed approved pursuant to this section. If the officer denies the application, the credits allocated to the applicant under this subsection shall be added to the annual amount available for allocation under subsection (2) of this section. Any denial of an application by the officer pursuant to this section may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(2) The total amount of credits that may be allocated by the officer under this section in any calendar year shall be limited to fifteen million dollars. If the amount of credits allocated in any calendar year is less than fifteen million dollars, the unused amount shall be carried forward to subsequent years and shall be available for allocation in subsequent years until fully utilized, except as otherwise provided in section 77-2912. The officer shall allocate credits based on priority date, from earliest to latest. If the officer determines that the complete applications for credits in any calendar year exceed the maximum amount of credits available under this section for that year, only those applications with a priority date on or before the date on which the officer makes that determination may receive an allocation in that year, and the officer shall not make additional allocations until sufficient credits are available. If the officer suspends allocations of credits pursuant to this section, applications with priority dates on or before the date of such suspension shall retain their priority dates. Once additional credits are available for allocation, the officer shall once again allocate credits based on priority date, from earliest to latest, even if the priority dates are from a prior calendar year.

(3) Prior to December 1 of any year, the holder of an allocation of credits under this section who has not commenced the improvements in his or her approved application shall notify the officer of his or her intent to retain or release the allocation. Any released allocation shall be added to the aggregate amount of credits available for allocation in the following year. Any holder of an allocation who fails to timely notify the officer of such intent shall be deemed to have released the allocation.

(4) The holder of an allocation of credits whose application was approved under this section shall start substantial work pursuant to the approved application within twenty-four months after receiving notice of approval of the

application or, if no notice of approval is sent by the officer, within twenty-four months after the application is deemed approved pursuant to this section. Failure to comply with this subsection shall result in forfeiture of the allocation of credits received under this section. Any such forfeited allocation shall be added to the aggregate amount of credits available for allocation for the year in which the forfeiture occurred.

(5) Notwithstanding subsection (1) of this section, the person applying for the credit under this section may, at its own risk, incur eligible expenditures up to six months prior to the submission of the application required under subsection (1) of this section if such eligible expenditures are limited to architectural fees, accounting and legal fees, and any costs related to the protection of the historically significant real property from deterioration.

Source: Laws 2014, LB191, § 5.

Effective date July 18, 2014.

Cross References

Administrative Procedure Act, see section 84-920.

77-2906 Request for final approval; form; approval; when; denial; appeal; credit; issuance of certificates; fee; credit carried forward.

(1) Within twelve months after the date on which the historically significant real property is placed in service, a person whose application was approved under section 77-2905 shall file a request for final approval containing all required information with the officer on a form prescribed by the officer and shall include a fee established by the officer pursuant to section 77-2907. The officer shall then determine whether the work substantially conforms to the application approved under section 77-2905. If the work substantially conforms and no other significant improvements have been made to the historically significant real property that do not substantially comply with the standards, the officer shall approve the request for final approval and refer the application to the department to determine the amount of eligible expenditures, calculate the amount of the credit, and issue a certificate to the person evidencing the credit. If the work does not substantially conform to the approved application or if other significant improvements have been made to the historically significant real property that do not substantially comply with the standards, the officer shall deny the request for final approval and provide the person with a written explanation of the decision. The officer shall make a determination on the request for final approval in writing within thirty days after the filing of the request. If the officer does not make a determination within thirty days after the filing of the request, the request shall be deemed approved and the person may petition the department directly to determine the amount of eligible expenditures, calculate the amount of the credit, and issue a certificate evidencing the credit. Any denial of a request for final approval by the officer pursuant to this section may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(2) The department shall divide the credit and issue multiple certificates to a person who qualifies for the credit upon reasonable request.

(3) In calculating the amount of the credits to be issued pursuant to this section, the department may issue credits in an amount that differs from the amount of credits allocated by the officer under section 77-2905 if such credits are supported by eligible expenditures as determined by the department, except

that the department shall not issue credits in an amount exceeding one hundred ten percent of the amount of credits allocated by the officer under section 77-2905. If the amount of credits to be issued under this section is more than the amount of credits allocated by the officer pursuant to section 77-2905, the department shall notify the officer of the difference and such amount shall be subtracted from the annual amount available for allocation under section 77-2905. If the amount of credits to be issued under this section is less than the amount of credits allocated by the officer pursuant to section 77-2905, the department shall notify the officer of the difference and such amount shall be added to the annual amount available for allocation under section 77-2905.

(4) The department shall not issue any certificates for credits under this section until the recipient of the credit has paid to the department a fee equal to one-quarter of one percent of the credit amount. The department shall remit such fees to the State Treasurer for credit to the Civic and Community Center Financing Fund.

(5) If the recipient of the credit is (a) a corporation having an election in effect under subchapter S of the Internal Revenue Code of 1986, as amended, (b) a partnership, or (c) a limited liability company, the credit may be claimed by the shareholders of the corporation, the partners of the partnership, or the members of the limited liability company in the same manner as those shareholders, partners, or members account for their proportionate shares of the income or losses of the corporation, partnership, or limited liability company, or as provided in the bylaws or other executed agreement of the corporation, partnership, or limited liability company. Credits granted to a partnership, a limited liability company taxed as a partnership, or other multiple owners of property shall be passed through to the partners, members, or owners, respectively, on a pro rata basis or pursuant to an executed agreement among the partners, members, or owners documenting any alternate distribution method.

(6) Subject to section 77-2912, any credit amount that is unused may be carried forward to subsequent tax years until fully utilized.

(7) Credits allowed under this section may be claimed for taxable years beginning or deemed to begin on or after January 1, 2015, under the Internal Revenue Code of 1986, as amended.

Source: Laws 2014, LB191, § 6.
Effective date July 18, 2014.

Cross References

Administrative Procedure Act, see section 84-920.

77-2907 Fees.

The officer shall establish and collect the application fee required under section 77-2905 and the fee for the request for final approval required under section 77-2906. Such fees shall be in amounts sufficient to offset the costs of processing and monitoring applications filed under the Nebraska Job Creation and Mainstreet Revitalization Act. Such fees shall be remitted by the officer to the State Treasurer for credit to the Nebraska Job Creation and Mainstreet Revitalization Fund.

Source: Laws 2014, LB191, § 7.
Effective date July 18, 2014.

77-2908 Recapture of credits; written notice; procedure; amount.

All or a portion of the credits received under the Nebraska Job Creation and Mainstreet Revitalization Act shall be subject to recapture by the department from the foreclosure of a lien which shall, as a condition of the department issuing credits under the act, be imposed on the historically significant real property as a lien having the priority of a tax lien pursuant to the filing of a notice of lien. Credits shall be subject to recapture from the person owning the historically significant real property on the date the officer determines the recapture event occurred if at any time during the five years after the historically significant real property is placed into service the officer determines the historically significant real property has been the subject of work not in substantial conformance with the approved application or the documents from which the credit was calculated. If the person owning the historically significant real property on the date the officer determines the recapture event occurred is a corporation having an election in effect under subchapter S of the Internal Revenue Code of 1986, as amended, a partnership, or a limited liability company, the liability of the shareholders, partners, or members for recapture shall be proportionate to their ownership in the applicable corporation, partnership, or limited liability company. Any action to recapture credits under this section may proceed only after a written notice is given to the person owning the historically significant real property on the date the officer determines the recapture event occurred and that person is allowed a six-month cure period. Thereafter, the credit shall be subject to recapture as follows:

(1) If the event causing recapture occurs during the first year after the historically significant real property is placed into service, one hundred percent of the credit may be recaptured;

(2) If the event causing recapture occurs during the second year after the historically significant real property is placed into service, eighty percent of the credit may be recaptured;

(3) If the event causing recapture occurs during the third year after the historically significant real property is placed into service, sixty percent of the credit may be recaptured;

(4) If the event causing recapture occurs during the fourth year after the historically significant real property is placed into service, forty percent of the credit may be recaptured; and

(5) If the event causing recapture occurs during the fifth year after the historically significant real property is placed into service, twenty percent of the credit may be recaptured.

Source: Laws 2014, LB191, § 8.

Effective date July 18, 2014.

77-2909 Transfer, sale, or assignment of credit; limitation; use; notice; department; duties; powers.

(1) Persons who receive the original issuance of credits from the department under section 77-2906 may transfer, sell, or assign up to fifty percent of such credits to any person or legal entity. If the person who receives the original issuance of credits from the department is a political subdivision or a tax-exempt entity under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, such fifty-percent limitation shall not apply.

(2) The credits allowed to be transferred, sold, or assigned pursuant to subsection (1) of this section may thereafter be transferred, sold, or assigned multiple times, either in whole or in part, by or to any person or legal entity.

(3) Any person acquiring credits under this section may use such credits to offset up to one hundred percent of such person's income tax due under the Nebraska Revenue Act of 1967 or any tax due under sections 77-907 to 77-918 or 77-3801 to 77-3807 in the year the historically significant real property is placed in service and in subsequent years until all credits have been utilized, except as otherwise provided in section 77-2912.

(4) The person transferring, selling, or assigning the credits shall notify the officer and the department in writing within fifteen calendar days following the effective date of the transfer, sale, or assignment and shall remit to the department the certificate issued for the credits that were transferred, sold, or assigned. The department shall then issue new certificates as necessary to effectuate the transfer, sale, or assignment. The issuance of the new credits by the department shall perfect the transfer, sale, or assignment of credits.

(5) The department shall develop a system to track the transfer, sale, and assignment of credits and to certify the ownership of the credits.

(6) The department shall have, with respect to the Nebraska Job Creation and Mainstreet Revitalization Act, all authority granted to it in section 77-27,119.

Source: Laws 2014, LB191, § 9.
Effective date July 18, 2014.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-2910 Rules and regulations; Nebraska State Historical Society; Department of Revenue; joint report; contents.

(1) The Nebraska State Historical Society and the department may each adopt and promulgate rules and regulations to carry out the Nebraska Job Creation and Mainstreet Revitalization Act.

(2) The Nebraska State Historical Society and the department shall issue a joint report electronically to the Revenue Committee of the Legislature no later than December 31, 2017. The report shall include, but not be limited to, (a) the total number of applications submitted under the Nebraska Job Creation and Mainstreet Revitalization Act, (b) the number of applications approved or conditionally approved, (c) the number of applications outstanding, if any, (d) the number of applications denied and the basis for denial, (e) the total amount of eligible expenditures approved, (f) the total amount of credits issued, claimed, and still available for use, (g) the total amount of fees collected, (h) the name and address location of each historically significant real property identified in each application, whether approved or denied, (i) the total amount of credits transferred, sold, and assigned and a certification of the ownership of the credits, (j) the total amount of credits claimed against each tax type by category, and (k) the total amount of credits recaptured, if any. No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2014, LB191, § 10.
Effective date July 18, 2014.

77-2911 Nebraska Job Creation and Mainstreet Revitalization Fund; created; use; investment.

The Nebraska Job Creation and Mainstreet Revitalization Fund is created. The fund shall be administered by the Nebraska State Historical Society and shall consist of all fees credited to the fund pursuant to section 77-2907. The fund shall be used to administer and enforce the Nebraska Job Creation and Mainstreet Revitalization Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 2014, LB191, § 11.
Effective date July 18, 2014.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

77-2912 Application deadline; allocation, issuance, or use of credits deadline.

There shall be no new applications filed under the Nebraska Job Creation and Mainstreet Revitalization Act after December 31, 2018. All applications and all credits pending or approved before such date shall continue in full force and effect, except that no credits shall be allocated under section 77-2905, issued under section 77-2906, or used on any tax return or similar filing after December 31, 2024.

Source: Laws 2014, LB191, § 12.
Effective date July 18, 2014.

ARTICLE 32**LAND REUTILIZATION AUTHORITY****Section**

77-3206.02. Authority; transfer to land bank authorized.

77-3211. Sheriff; no bids; authority deemed purchaser; payment; applicability of section.

77-3213. Act, how cited.

77-3206.02 Authority; transfer to land bank authorized.

Notwithstanding any provision of the Land Reutilization Act to the contrary, a land reutilization authority may transfer property held by such authority to a land bank created under the Nebraska Municipal Land Bank Act upon such terms and conditions as may be agreed upon between the authority and the land bank.

Source: Laws 2013, LB97, § 29.

Cross References

Nebraska Municipal Land Bank Act, see section 19-5201.

77-3211 Sheriff; no bids; authority deemed purchaser; payment; applicability of section.

(1)(a) Except as provided in subsection (2) of this section, if, when the sheriff offers the parcels of real estate for sale under the tax foreclosure laws of this state, there is no bid equal to the full amount of all tax bills included in the judgment, interest, penalties, fees, and costs then due thereon made or received

at such sale, the authority shall be deemed to have bid the full amount of all tax bills included in the judgment, interest, penalties, fees, and costs then due, and if no other earlier or later bid be then received by the sheriff as allowed by law in excess of the bid of the authority, then the bid of the authority shall be announced as accepted. The sheriff shall report any such bid or bids so made by the authority in the same way as his or her report of other bids is made.

(b) The authority shall pay, if possible, any penalties, fees, or costs included in the judgment of foreclosure of such parcel of real estate when such parcel is sold or otherwise disposed of by such authority. Upon confirmation by the court of such bid at such sale by such authority, and upon notification by the sheriff, the county treasurer, or the city treasurer in the case of an authority created pursuant to subsection (3) of section 77-3201, shall mark the tax bills to the date of such confirmation as canceled by sale to the authority, and shall take credit for the full amount of such tax bills, including principal amount, interest, penalties, fees, and costs, on his or her books and his or her statements with any other taxing authorities.

(2) Subsection (1) of this section shall not apply if the real estate offered for sale under the tax foreclosure laws of this state lies within a municipality that has created a land bank pursuant to the Nebraska Municipal Land Bank Act.

Source: Laws 1973, LB 73, § 11; Laws 1982, LB 630, § 2; Laws 2009, LB360, § 6; Laws 2013, LB97, § 27.

Cross References

Nebraska Municipal Land Bank Act, see section 19-5201.

77-3213 Act, how cited.

Sections 77-3201 to 77-3213 shall be known and may be cited as the Land Reutilization Act.

Source: Laws 1973, LB 73, § 13; Laws 2008, LB710, § 6; Laws 2013, LB97, § 28.

ARTICLE 33

UNIFORM ACT ON INTERSTATE ARBITRATION AND COMPROMISE OF DEATH TAXES

Section

77-3311. Determination of domicile; election to invoke act; notice; rejection; effect.

77-3311 Determination of domicile; election to invoke act; notice; rejection; effect.

In any case in which this state and one or more other states each claims that it was a domicile of a decedent at the time of his or her death and no judicial determination of domicile for death tax purposes has been made in any of such states, any executor or administrator or the taxing official of any such state may elect to invoke the provisions of the Uniform Act on Interstate Arbitration and Compromise of Death Taxes. Such election shall be evidenced by mailing notice to the taxing officials of any such state and to each executor, ancillary administrator, and interested person. Any executor or administrator may reject such election by mailing notice to the taxing officials involved and to all other executors within forty days after the receipt of such notice of election. If such election is rejected, no further proceedings shall be had under the act. If such

election is not rejected, the dispute as to the death taxes shall be determined solely as provided in the act, and no other proceedings to determine or assess such death taxes shall thereafter be instituted in the courts of this state or otherwise.

Source: Laws 1976, LB 584, § 11; Laws 1987, LB 93, § 21; Laws 2012, LB727, § 47.

ARTICLE 34

POLITICAL SUBDIVISIONS, BUDGET LIMITATIONS

(d) LIMITATION ON PROPERTY TAXES

Section

77-3442. Property tax levies; maximum levy; exceptions.

77-3445. Council on public improvements and services; membership; powers and duties.

(e) BASE LIMITATION

77-3446. Base limitation, defined.

(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 of ninety-five cents per one hundred dollars of taxable valuation of property subject to the levy. 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 one-half cent on each one hundred dollars of taxable property subject to the levy for elementary learning center facility leases, for remodeling of leased elementary learning center facilities, and for up to fifty percent of the estimated cost for focus school or program capital projects approved by the learning community coordinating council pursuant to section 79-2111.

(i) For each fiscal year, learning communities may levy a maximum levy of one and one-half cents on each one hundred dollars of taxable property subject to the levy for early childhood education programs for children in poverty, for elementary learning center employees, for contracts with other entities or individuals who are not employees of the learning community for elementary learning center programs and services, and for pilot projects, except that no more than ten percent of such levy may be used for elementary learning center employees.

(3)(a) For fiscal years 2011-12 and 2012-13, community college areas may levy a maximum of ten and one-quarter cents per one hundred dollars of taxable valuation of property subject to the levy for operating expenditures and may also levy the additional levies provided in subdivisions (1)(b) and (c) of section 85-1517.

(b) For fiscal year 2013-14 and each fiscal year thereafter, community college areas may levy the levies provided in subdivisions (2)(a) through (c) of section 85-1517, in accordance with the provisions of such subdivisions. A community

college area may exceed the levy provided in subdivision (2)(b) of section 85-1517 by the amount necessary to retire 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)(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 2017-18.

(5) Any educational service unit authorized to levy a property tax pursuant to section 79-1225 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. Property tax levies for costs of reassessment of the assessment function pursuant to section 77-1340 or 77-1340.04 are not included in the levy limits established in this subsection for fiscal years 2010-11 through 2013-14.

(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 (a) 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, (b) for preexisting lease-purchase contracts approved prior to July 1, 1998, (c) for bonds as defined in section 10-134 approved according to law and secured by a levy on property except as provided in section 44-4317 for bonded indebtedness issued by educational service units and school districts, and (d) 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 provi-

sions 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.

(14) For school districts that file a binding resolution on or before May 9, 2008, with the county assessors, county clerks, and county treasurers for all counties in which the school district has territory pursuant to subsection (7) of section 79-458, if the combined levies, except levies for bonded indebtedness approved by the voters of the school district and levies for the refinancing of such bonded indebtedness, are in excess of the greater of (a) one dollar and twenty cents per one hundred dollars of taxable valuation of property subject to the levy or (b) the maximum levy authorized by a vote pursuant to section 77-3444, all school district levies, except levies for bonded indebtedness approved by the voters of the school district and levies for the refinancing of such bonded indebtedness, shall be considered unauthorized levies under section 77-1606.

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; Laws 2008, LB988, § 2; Laws 2008, LB1154, § 5; Laws 2009, LB121, § 11; Laws 2010, LB1070, § 4; Laws 2010, LB1072, § 3; Laws 2011, LB59, § 2; Laws 2011, LB400, § 2; Laws 2012, LB946, § 10; Laws 2012, LB1104, § 1; Laws 2013, LB585, § 1.

Cross References

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.

77-3445 Council on public improvements and services; membership; powers and duties.

A council on public improvements and services may be created within each county or for adjoining counties by resolutions of county boards or by joint resolutions passed by at least three different types of political subdivisions located in the county which are authorized to levy property taxes or which may benefit from property taxes affected by the levy limits imposed by sections 77-3442 to 77-3444. Such councils shall include, but are not limited to, one elected official from each school board, county board, incorporated city or village, natural resources district, community college, educational service unit, hospital district, airport authority, fire protection district, and township taxing property within the county or counties. The elected governing body of each political subdivision which has the legal authority to request property tax

funding or a levy set by the county board within a county may by resolution of the governing body appoint one elected official from the governing board to the council on public improvements and services.

Councils on public improvements and services may meet as often as necessary prior to the adoption of budgets and property tax requests affected by the levy limits described in sections 77-3442 to 77-3444. The council shall jointly examine the budgets and property tax requests of each governmental agency or quasi-governmental agency with statutory authority to request a share of the property tax. The county clerk of each county shall attend such meetings and keep a public record of the proceedings. Each council on public improvements and services which is created by resolution as provided in this section shall hold at least one public meeting prior to the adoption of public budgets affected by the levy limits imposed by sections 77-3442 to 77-3444. Such council may continue to meet to discuss issues of public service provision in an effective and coordinated manner, the impacts of levy limits, state and federal law, program, or aid changes, and the joint provision or use of capital facilities and equipment.

Source: Laws 1996, LB 1114, § 4; Laws 1998, LB 306, § 39; Laws 2012, LB801, § 100.

(e) BASE LIMITATION

77-3446 Base limitation, defined.

Base limitation means the budget limitation rate applicable to school districts and the limitation on growth of restricted funds applicable to other political subdivisions prior to any increases in the rate as a result of special actions taken by a supermajority of any governing board or of any exception allowed by law. The base limitation is two and one-half percent until adjusted, except that the base limitation for school districts for school fiscal year 2012-13 is one-half of one percent and the base limitation for school districts for school fiscal year 2013-14 is one and one-half percent. The base limitation may be adjusted annually by the Legislature to reflect changes in the prices of services and products used by school districts and political subdivisions.

Source: Laws 1998, LB 989, § 15; Laws 2001, LB 365, § 1; Laws 2003, LB 540, § 3; Laws 2009, LB545, § 2; Laws 2009, First Spec. Sess., LB5, § 1; Laws 2011, LB235, § 1; Laws 2013, LB407, § 1.

ARTICLE 35

HOMESTEAD EXEMPTION

Section

- 77-3501. Definitions, where found.
- 77-3501.01. Exempt amount, defined.
- 77-3506. Certain veterans; exemption; unremarried widow or widower; application.
- 77-3506.02. County assessor; duties.
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- 77-3509.01. Transfer of exemption to new homestead; procedure.

Section

- 77-3509.02. Transfer of exemption to new homestead; disallowance for original homestead; county assessor; duties.
- 77-3509.03. Homesteads; exemptions; property tax statement; contents.
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- 77-3516. Homestead; exemption; application; county assessor; duties.
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- 77-3521. Tax Commissioner; rules and regulations.
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- 77-3523. Homestead; exemption; county treasurer; certify tax revenue lost within county; reimbursed; manner; distribution.
- 77-3529. Homestead; exemption; application; denied; other exemption allowed.

77-3501 Definitions, where found.

For purposes of sections 77-3501 to 77-3529, unless the context otherwise requires, the definitions found in sections 77-3501.01 to 77-3505.05 shall be used.

Source: Laws 1979, LB 65, § 1; Laws 1984, LB 809, § 1; Laws 1987, LB 376A, § 1; Laws 1989, LB 84, § 7; Laws 1994, LB 902, § 25; Laws 1995, LB 483, § 2; Laws 1997, LB 182, § 1; Laws 2009, LB94, § 1; Laws 2014, LB1087, § 1.
Operative date January 1, 2015.

77-3501.01 Exempt amount, defined.

(1) For purposes of section 77-3507, exempt amount shall mean the lesser of (a) the taxable value of the homestead or (b) one hundred percent of the average assessed value of single-family residential property in the claimant’s county of residence as determined in section 77-3506.02 or forty thousand dollars, whichever is greater.

(2) For purposes of sections 77-3508 and 77-3509, exempt amount shall mean the lesser of (a) the taxable value of the homestead or (b) one hundred twenty percent of the average assessed value of single-family residential property in the claimant’s county of residence as determined in section 77-3506.02 or fifty thousand dollars, whichever is greater.

(3) For purposes of section 77-3506, exempt amount shall mean the taxable value of the homestead.

Source: Laws 1994, LB 902, § 27; Laws 2006, LB 968, § 13; Laws 2014, LB1087, § 2.
Operative date January 1, 2015.

77-3506 Certain veterans; exemption; unremarried widow or widower; application.

(1) All homesteads in this state shall be assessed for taxation the same as other property, except that there shall be exempt from taxation, on any

homestead described in subsection (2) of this section, one hundred percent of the exempt amount.

(2) The exemption described in subsection (1) of this section shall apply to homesteads of:

(a) A veteran who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), who is drawing compensation from the United States Department of Veterans Affairs because of one hundred percent service-connected disability, and who is not eligible for total exemption under sections 77-3526 to 77-3528 or the unremarried widow or widower of a veteran described in this subdivision;

(b) An unremarried widow or widower of any veteran, including a veteran other than a veteran described in section 80-401.01, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) and who died because of a service-connected disability; and

(c) An unremarried widow or widower of a serviceman or servicewoman, including a veteran other than a veteran described in section 80-401.01, whose death while on active duty was service-connected.

(3) Application for exemption under this section shall include certification of the status set forth in subsection (2) of this section from the United States Department of Veterans Affairs.

Source: Laws 2014, LB1087, § 5.
Operative date January 1, 2015.

77-3506.02 County assessor; duties.

After county board of equalization action pursuant to sections 77-1502 to 77-1504.01 and on or before September 1 each year, the county assessor shall certify to the Department of Revenue the average assessed value of single-family residential property in the county for the current year for purposes of sections 77-3507, 77-3508, and 77-3509.

The county assessor shall determine the current average assessed value of single-family residential property from all real property records containing dwellings, mobile homes, and duplexes all of which are designed for occupancy as single-family residential property and any associated land not to exceed one acre.

The county assessor shall also report to the Department of Revenue the computed exempt amounts pursuant to section 77-3501.01.

Source: Laws 1994, LB 902, § 32; Laws 1995, LB 499, § 1; Laws 2004, LB 973, § 43; Laws 2014, LB1087, § 3.
Operative date January 1, 2015.

77-3506.03 Exempt amount; reduction; when; homestead exemption; limitation.

For homesteads valued at or above the maximum value, the exempt amount for any exemption under section 77-3507, 77-3508, or 77-3509 shall be reduced by ten percent for each two thousand five hundred dollars of value by which the homestead exceeds the maximum value and any homestead which exceeds the maximum value by twenty thousand dollars or more is not eligible for any

exemption under section 77-3507, 77-3508, or 77-3509. This section shall not apply to any exemption under section 77-3506.

Source: Laws 1995, LB 483, § 1; Laws 2014, LB1087, § 4.
Operative date January 1, 2015.

77-3507 Homesteads; assessment; exemptions; qualified claimants; based on income.

(1) All homesteads in this state shall be assessed for taxation the same as other property, except that there shall be exempt from taxation on homesteads of qualified claimants a percentage of the exempt amount as limited by section 77-3506.03. The percentage of the exempt amount shall be determined based on the household income of a claimant pursuant to subsections (2) through (4) of this section.

(2) For 2014, for a qualified married or closely related claimant, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant’s household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 31,600	100
31,601 through 33,300	90
33,301 through 35,000	80
35,001 through 36,700	70
36,701 through 38,400	60
38,401 through 40,100	50
40,101 through 41,800	40
41,801 through 43,500	30
43,501 through 45,200	20
45,201 through 46,900	10
46,901 and over	0

(3) For 2014, for a qualified single claimant, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant’s household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 26,900	100
26,901 through 28,300	90
28,301 through 29,700	80
29,701 through 31,100	70
31,101 through 32,500	60
32,501 through 33,900	50
33,901 through 35,300	40
35,301 through 36,700	30
36,701 through 38,100	20
38,101 through 39,500	10
39,501 and over	0

(4) For exemption applications filed in calendar year 2015 and each year thereafter, the income eligibility amounts in subsections (2) and (3) of this

section shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code. The income eligibility amounts shall be adjusted for cumulative inflation since 2014. If any amount is not a multiple of one hundred dollars, the amount shall be rounded to the next lower multiple of one hundred dollars.

Source: Laws 1979, LB 65, § 7; Laws 1980, LB 647, § 4; Laws 1981, LB 179, § 19; Laws 1984, LB 956, § 1; Laws 1988, LB 1105, § 2; Laws 1994, LB 902, § 33; Laws 1995, LB 483, § 4; Laws 1997, LB 182, § 4; Laws 1999, LB 179, § 1; Laws 2014, LB986, § 1. Effective date April 3, 2014.

77-3508 Homesteads; assessment; exemptions; individuals; based on disability and income.

(1)(a) All homesteads in this state shall be assessed for taxation the same as other property, except that there shall be exempt from taxation, on any homestead described in subdivision (b) of this subsection, a percentage of the exempt amount as limited by section 77-3506.03. The exemption shall be based on the household income of a claimant pursuant to subsections (2) through (4) of this section.

(b) The exemption described in subdivision (a) of this subsection shall apply to homesteads of:

(i) Veterans as defined in section 80-401.01 who were discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) and who are totally disabled by a non-service-connected accident or illness;

(ii) Individuals who have a permanent physical disability and have lost all mobility so as to preclude locomotion without the regular use of a mechanical aid or prostheses;

(iii) Individuals who have undergone amputation of both arms above the elbow or who have a permanent partial disability of both arms in excess of seventy-five percent; and

(iv) Beginning January 1, 2015, individuals who have a developmental disability as defined in section 83-1205.

(c) Application for the exemption described in subdivision (a) of this subsection shall include certification from a qualified medical physician, physician assistant, or advanced practice registered nurse for subdivisions (b)(i) through (b)(iii) of this subsection, certification from the United States Department of Veterans Affairs affirming that the homeowner is totally disabled due to non-service-connected accident or illness for subdivision (b)(i) of this subsection, or certification from the Department of Health and Human Services for subdivision (b)(iv) of this subsection. Such certification from a qualified medical physician, physician assistant, or advanced practice registered nurse or from the Department of Health and Human Services shall be made on forms prescribed by the Department of Revenue.

(2) For 2014, for a married or closely related claimant as described in subsection (1) of this section, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

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Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 34,700	100
34,701 through 36,400	90
36,401 through 38,100	80
38,101 through 39,800	70
39,801 through 41,500	60
41,501 through 43,200	50
43,201 through 44,900	40
44,901 through 46,600	30
46,601 through 48,300	20
48,301 through 50,000	10
50,001 and over	0

(3) For 2014, for a single claimant as described in subsection (1) of this section, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 30,300	100
30,301 through 31,700	90
31,701 through 33,100	80
33,101 through 34,500	70
34,501 through 35,900	60
35,901 through 37,300	50
37,301 through 38,700	40
38,701 through 40,100	30
40,101 through 41,500	20
41,501 through 42,900	10
42,901 and over	0

(4) For exemption applications filed in calendar year 2015 and each year thereafter, the income eligibility amounts in subsections (2) and (3) of this section shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code. The income eligibility amounts shall be adjusted for cumulative inflation since 2014. If any amount is not a multiple of one hundred dollars, the amount shall be rounded to the next lower multiple of one hundred dollars.

Source: Laws 1979, LB 65, § 8; Laws 1980, LB 647, § 5; Laws 1981, LB 478, § 1; Laws 1983, LB 195, § 2; Laws 1986, LB 1258, § 2; Laws 1987, LB 376A, § 5; Laws 1988, LB 1105, § 3; Laws 1991, LB 2, § 17; Laws 1994, LB 902, § 34; Laws 1995, LB 483, § 5; Laws 1997, LB 182, § 5; Laws 1999, LB 179, § 2; Laws 2000, LB 1279, § 2; Laws 2005, LB 17, § 1; Laws 2005, LB 54, § 17; Laws 2014, LB986, § 2.

Effective date April 3, 2014.

77-3509 Homesteads; assessment; exemptions; certain veterans or unremarried widow or widower; percentage of exemption.

(1)(a) All homesteads in this state shall be assessed for taxation the same as other property, except that there shall be exempt from taxation, on any homestead described in subdivision (b) of this subsection, a percentage of the exempt amount as limited by section 77-3506.03.

(b) The exemption described in subdivision (a) of this subsection shall apply to homesteads of:

(i) A veteran described in section 80-401.01 who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions), who is drawing compensation from the United States Department of Veterans Affairs because of one hundred percent disability, and who is not eligible for total exemption under sections 77-3526 to 77-3528 or the unremarried widow or widower of a veteran described in this subdivision (i);

(ii) An unremarried widow or widower of any veteran, including a veteran other than a veteran described in section 80-401.01, who was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions) and who died because of a service-connected disability;

(iii) An unremarried widow or widower of a serviceman or servicewoman who died while on active duty during the periods described in section 80-401.01; and

(iv) An unremarried widow or widower of a serviceman or servicewoman, including a veteran other than a veteran described in section 80-401.01, whose death while on active duty was service-connected.

(c) The exemption described in subdivision (a) of this subsection shall be based on the household income of a claimant pursuant to subsections (2) through (4) of this section. Application for exemption under this section shall include certification of the status set forth in this section from the United States Department of Veterans Affairs.

(2) For 2014, for a married or closely related claimant as described in subsection (1) of this section, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 34,700	100
34,701 through 36,400	90
36,401 through 38,100	80
38,101 through 39,800	70
39,801 through 41,500	60
41,501 through 43,200	50
43,201 through 44,900	40
44,901 through 46,600	30
46,601 through 48,300	20
48,301 through 50,000	10
50,001 and over	0

(3) For 2014, for a single claimant as described in subsection (1) of this section, the percentage of the exempt amount for which the claimant shall be eligible shall be the percentage in Column B which corresponds with the claimant's household income in Column A in the table found in this subsection.

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Column A Household Income In Dollars	Column B Percentage Of Relief
0 through 30,300	100
30,301 through 31,700	90
31,701 through 33,100	80
33,101 through 34,500	70
34,501 through 35,900	60
35,901 through 37,300	50
37,301 through 38,700	40
38,701 through 40,100	30
40,101 through 41,500	20
41,501 through 42,900	10
42,901 and over	0

(4) For exemption applications filed in calendar year 2015 and each year thereafter, the income eligibility amounts in subsections (2) and (3) of this section shall be adjusted for inflation by the method provided in section 151 of the Internal Revenue Code. The income eligibility amounts shall be adjusted for cumulative inflation since 2014. If any amount is not a multiple of one hundred dollars, the amount shall be rounded to the next lower multiple of one hundred dollars.

Source: Laws 1979, LB 65, § 9; Laws 1983, LB 195, § 3; Laws 1986, LB 1258, § 3; Laws 1989, LB 762, § 10; Laws 1994, LB 902, § 35; Laws 1995, LB 483, § 6; Laws 1997, LB 182, § 6; Laws 1999, LB 179, § 3; Laws 2005, LB 54, § 18; Laws 2014, LB986, § 3; Laws 2014, LB1087, § 6.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB986, section 3, with LB1087, section 6, to reflect all amendments.

Note: Changes made by LB986 became effective April 3, 2014. Changes made by LB1087 became operative January 1, 2015.

77-3509.01 Transfer of exemption to new homestead; procedure.

The owner of a homestead which has been granted an exemption provided in sections 77-3506 and 77-3507 to 77-3509, who becomes the owner of another homestead prior to August 15 during the year for which the exemption was granted, may file an application with the county assessor of the county where the new homestead is located, on or before August 15 of such year, for a transfer of the exemption to the new homestead. The county assessor shall examine each application and determine whether or not the new homestead, except for the January 1 through August 15 ownership and occupancy requirement and the income requirements, is eligible for exemption under sections 77-3506 and 77-3507 to 77-3509. If the application is approved by the county assessor, he or she shall make a deduction upon the assessment rolls using the same criteria as previously applied to the original homestead. The county assessor may allow the application for transfer to also be considered an application for a homestead exemption for the subsequent year.

Source: Laws 1983, LB 494, § 5; Laws 1984, LB 809, § 4; Laws 1985, Second Spec. Sess., LB 6, § 1; Laws 1987, LB 376A, § 6; Laws 1988, LB 834, § 1; Laws 1996, LB 921, § 1; Laws 2009, LB302, § 1; Laws 2014, LB1087, § 7.
Operative date January 1, 2015.

77-3509.02 Transfer of exemption to new homestead; disallowance for original homestead; county assessor; duties.

If the owner of any homestead granted an exemption under sections 77-3506 and 77-3507 to 77-3509 becomes the owner of another homestead on or before August 15 of any year pursuant to section 77-3509.01 and makes the application for transfer of the homestead exemption and such application is approved, the exemption shall be disallowed for such year as applied to the original homestead if the exemption was granted based on the status of such owner. If the transfer involves property in more than one county, the county assessor of the county where the new homestead is located shall notify the other county assessor and the Department of Revenue of the application for transfer within ten days after receipt of the application.

Source: Laws 1983, LB 494, § 6; Laws 1984, LB 809, § 5; Laws 1985, Second Spec. Sess., LB 6, § 2; Laws 1987, LB 376A, § 7; Laws 1988, LB 834, § 2; Laws 1996, LB 921, § 2; Laws 2009, LB302, § 2; Laws 2014, LB1087, § 8.
Operative date January 1, 2015.

77-3509.03 Homesteads; exemptions; property tax statement; contents.

All property tax statements for homesteads granted an exemption in sections 77-3506 and 77-3507 to 77-3509 shall show the amount of the exemption, the tax that would otherwise be due, and a statement that the tax loss shall be reimbursed by the state as a homestead exemption.

Source: Laws 1984, LB 956, § 3; Laws 1989, LB 84, § 9; Laws 1991, LB 9, § 3; Laws 2014, LB1087, § 9.
Operative date January 1, 2015.

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 77-3506 and 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 for any applicant seeking an exemption under section 77-3507, 77-3508, or 77-3509 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, LB145, § 1; Laws 2014, LB1087, § 10.
Operative date January 1, 2015.

77-3511 Homestead; exemption; application; execution.

The application for homestead exemption or for transfer of homestead exemption shall be signed by the owner of the property who qualifies for exemption under sections 77-3501 to 77-3529 unless the owner is an incompetent or unable to make such application, in which case it shall be signed by the guardian. If an owner who in all respects qualifies for a homestead exemption under such sections dies after January 1 and before the last day for filing an application for a homestead exemption and before applying for a homestead exemption, his or her personal representative may file the application for exemption on or before the last day for filing an application for a homestead exemption of that year if the surviving spouse of such owner continues to occupy the homestead. Any exemption granted as a result of such application signed by a personal representative shall be in effect for only the year in which the owner died.

Source: Laws 1979, LB 65, § 11; Laws 1980, LB 647, § 6; Laws 1983, LB 195, § 4; Laws 1983, LB 494, § 3; Laws 1984, LB 809, § 7; Laws 1986, LB 1258, § 5; Laws 1987, LB 376A, § 9; Laws 1988, LB 1105, § 4; Laws 1989, LB 84, § 11; Laws 1994, LB 902, § 37; Laws 2014, LB1087, § 11.
Operative date January 1, 2015.

77-3512 Homestead; exemption; application; when filed.

It shall be the duty of each owner who applies for the homestead exemption provided in sections 77-3506 and 77-3507 to 77-3509 to file an application therefor with the county assessor of the county in which the homestead is located after February 1 and on or before June 30 of each year. Failure to do so shall constitute a waiver of the exemption for that year, except that:

(1) The county board of the county in which the homestead is located may, by majority vote, extend the deadline for an applicant to on or before July 20. An extension shall not be granted to an applicant who received an extension in the immediately preceding year; and

(2) An owner may file a late application pursuant to section 77-3514.01 if he or she includes documentation of a medical condition which impaired the owner's ability to file the application in a timely manner.

Source: Laws 1979, LB 65, § 12; Laws 1980, LB 647, § 7; Laws 1983, LB 195, § 5; Laws 1983, LB 396, § 2; Laws 1984, LB 809, § 8; Laws 1985, Second Spec. Sess., LB 6, § 4; Laws 1989, LB 84, § 12; Laws 1991, LB 9, § 5; Laws 1991, LB 773, § 21; Laws 1995, LB 133, § 1; Laws 1996, LB 1039, § 5; Laws 1997, LB 397, § 27;

Laws 2003, LB 192, § 2; Laws 2009, LB94, § 3; Laws 2014, LB1087, § 12.

Operative date January 1, 2015.

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 77-3506, 77-3507, or 77-3509 or subdivision (1)(b)(ii), (iii), or (iv) 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:

(a) The county board of the county in which the homestead is located may, by majority vote, extend the deadline for an applicant to on or before July 20. An extension shall not be granted to an applicant who received an extension in the immediately preceding year; and

(b) A claimant may file a late application pursuant to section 77-3514.01 if he or she includes documentation of a medical condition which impaired the claimant's ability to file the application in a timely manner.

(3) 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; Laws 2009, LB94, § 4; Laws 2014, LB986, § 4; Laws 2014, LB1087, § 13.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB986, section 4, with LB1087, section 13, to reflect all amendments.

Note: Changes made by LB986 became effective April 3, 2014. Changes made by LB1087 became operative January 1, 2015.

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 77-3506 and 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 for certification by a claimant to on or before July 20. An extension shall not be granted to an applicant who received an extension in the immediately preceding year. In addition, a claimant may make such certification late pursuant to section 77-3514.01 if he or she includes documentation of a medical condition which impaired the claimant's ability to certify in a timely manner. 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 77-3506 and 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 for exemptions under sections 77-3507, 77-3508, and 77-3509 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 77-3506 and 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, LB145, § 3; Laws 2009, LB94, § 5; Laws 2014, LB1087, § 14.

Operative date January 1, 2015.

77-3516 Homestead; exemption; application; county assessor; duties.

The county assessor shall examine each application for homestead exemption filed with him or her for an exemption pursuant to sections 77-3506 and 77-3507 to 77-3509 and shall determine, except for the income requirements, whether or not such application should be approved or rejected. If the application is approved, the county assessor shall mark the same approved and sign the application. In case he or she finds that the exemption should not be allowed by reason of not being in conformity to law, the county assessor shall mark the application rejected and state thereon the reason for such rejection and sign the application. In any case when the county assessor rejects an application for exemption, he or she shall notify the applicant of such action by mailing written notice to the applicant at the address shown in the application, which notice shall be mailed not later than July 31 of each year, except that in cases of a change in ownership or occupancy from January 1 through August 15 or a late application authorized by the county board or permitted because of a medical condition which impaired the applicant's ability to file in a timely manner, the notice shall be sent within a reasonable time. The notice shall be on forms prescribed by the Tax Commissioner.

Source: Laws 1979, LB 65, § 16; Laws 1980, LB 647, § 9; Laws 1983, LB 396, § 5; Laws 1984, LB 809, § 11; Laws 1985, Second Spec. Sess., LB 6, § 7; Laws 1986, LB 1258, § 7; Laws 1987, LB 376A, § 12; Laws 1989, LB 84, § 13; Laws 1991, LB 9, § 6; Laws 1991, LB 773, § 24; Laws 1995, LB 133, § 4; Laws 1996, LB 1039, § 8; Laws 1997, LB 397, § 30; Laws 2009, LB94, § 6; Laws 2014, LB1087, § 15.

Operative date January 1, 2015.

77-3517 Homestead; application for exemption; county assessor; Tax Commissioner; duties; refunds; liens.

(1) On or before August 1 of each year, the county assessor shall forward the approved applications for homestead exemptions and a copy of the certification of disability status that have been examined pursuant to section 77-3516 to the Tax Commissioner. The Tax Commissioner shall determine if the applicant meets the income requirements and may also review any other application information he or she deems necessary in order to determine whether the application should be approved. The Tax Commissioner shall, on or before November 1, certify his or her determinations to the county assessor. If the application is approved, the county assessor shall make the proper deduction on the assessment rolls. If the application is denied or approved in part, the Tax Commissioner shall notify the applicant of the denial or partial approval by mailing written notice to the applicant at the address shown on the application. The applicant may appeal the Tax Commissioner's denial or partial approval pursuant to section 77-3520. Late applications authorized by the county board shall be processed in a similar manner after approval by the county assessor.

(2)(a) Upon his or her own action or upon a request by an applicant, a spouse, or an owner-occupant, the Tax Commissioner may review any information necessary to determine whether an application is in compliance with sections 77-3501 to 77-3529. Any action taken by the Tax Commissioner pursuant to this subsection shall be taken within three years after December 31 of the year in which the exemption was claimed.

(b) If after completion of the review the Tax Commissioner determines that an exemption should have been approved or increased, the Tax Commissioner shall notify the applicant, spouse, or owner-occupant and the county treasurer and assessor of his or her determination. The applicant, spouse, or owner-occupant shall receive a refund of the tax, if any, that was paid as a result of the exemption being denied, in whole or in part. The county treasurer shall make the refund and shall amend the county's claim for reimbursement from the state.

(c) If after completion of the review the Tax Commissioner determines that an exemption should have been denied or reduced, the Tax Commissioner shall notify the applicant, spouse, or owner-occupant of such denial or reduction. The applicant, the spouse, and any owner-occupant may appeal the Tax Commissioner's denial or reduction pursuant to section 77-3520. Upon the expiration of the appeal period in section 77-3520, the Tax Commissioner shall notify the county assessor of the denial or reduction and the county assessor shall remove or reduce the exemption from the tax rolls of the county. Upon notification by the Tax Commissioner to the county assessor, the amount of tax due as a result of the action of the Tax Commissioner shall become a lien on the homestead until paid. Upon attachment of the lien, the county treasurer shall refund to the Tax Commissioner the amount of tax equal to the denied or reduced exemption for deposit into the General Fund. No lien shall be created if a change in ownership of the homestead or death of the applicant, the spouse, and all other owner-occupants has occurred prior to the Tax Commissioner's notice to the county assessor.

Source: Laws 1979, LB 65, § 17; Laws 1980, LB 647, § 10; Laws 1986, LB 1258, § 8; Laws 1987, LB 376A, § 13; Laws 1989, LB 84, § 14; Laws 1991, LB 9, § 7; Laws 1991, LB 773, § 25; Laws 1995, LB 133, § 5; Laws 1995, LB 499, § 2; Laws 1996, LB 1039, § 9; Laws 1997, LB 397, § 31; Laws 2010, LB877, § 6; Laws 2014, LB1087, § 16.

Operative date January 1, 2015.

77-3519 Homestead; exemption; county assessor; rejection; applicant; complaint; contents; hearing; appeal.

In any case when the county assessor rejects an application for homestead exemption, such applicant may obtain a hearing before the county board of equalization by filing a written complaint with the county clerk within thirty days from receipt of the notice from the county assessor showing such rejection. Such complaint shall specify his or her grievances and the pertinent facts in relation thereto, in ordinary and concise language and without repetition, and in such manner as to enable a person of common understanding to know what is intended. The board may take evidence pertinent to such complaint, and for that purpose may compel the attendance of witnesses and the production of books, records, and papers by subpoena. The board shall issue its

decision on the complaint within thirty days after the filing of the complaint. Notice of the board's decision shall be mailed by the county clerk to the applicant within seven days after the decision. The taxpayer shall have the right to appeal from the board's decision with reference to the application for homestead exemption to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the decision.

Source: Laws 1979, LB 65, § 19; Laws 1987, LB 376A, § 14; Laws 1995, LB 490, § 177; Laws 2004, LB 973, § 44; Laws 2011, LB384, § 19.

77-3521 Tax Commissioner; rules and regulations.

It shall be the duty of the Tax Commissioner to adopt and promulgate rules and regulations for the information and guidance of the county assessors and county boards of equalization, not inconsistent with sections 77-3501 to 77-3529, affecting the application, hearing, assessment, or equalization of property which is claimed to be entitled to the exemption granted by such sections.

Source: Laws 1979, LB 65, § 21; Laws 1984, LB 809, § 12; Laws 1989, LB 84, § 15; Laws 1994, LB 902, § 40; Laws 2014, LB1087, § 17.
Operative date January 1, 2015.

77-3522 Violations; penalty.

(1) Any person who makes any false or fraudulent claim for exemption or any false statement or false representation of a material fact in support of such claim or any person who assists another in the preparation of any such false or fraudulent claim or enters into any collusion with another by the execution of a fictitious deed or other instrument for the purpose of obtaining unlawful exemption under sections 77-3501 to 77-3529 shall be guilty of a Class II misdemeanor and shall be subject to a forfeiture of any such exemption for a period of two years from the date of conviction. Any person who shall make an oath or affirmation to any false or fraudulent application for homestead exemption knowing the same to be false or fraudulent shall be guilty of a Class I misdemeanor.

(2) In addition to the penalty provided in subsection (1) of this section, if any person files a claim for exemption as provided in section 77-3506, 77-3507, 77-3508, or 77-3509 which is excessive due to misstatements by the owner filing such claim, the claim may be disallowed in full and, if the claim has been allowed, an amount equal to the amount of taxes lawfully due but not paid by reason of such unlawful and improper allowance of homestead exemption shall be due and shall upon entry of the amount thereof on the books of the county treasurer be a lien on such property until paid and a penalty equal to the amount of taxes lawfully due but claimed for exemption shall be assessed.

Source: Laws 1979, LB 65, § 22; Laws 1984, LB 809, § 13; Laws 1986, LB 1258, § 9; Laws 1989, LB 84, § 16; Laws 1994, LB 902, § 41; Laws 2014, LB1087, § 18.
Operative date January 1, 2015.

77-3523 Homestead; exemption; county treasurer; certify tax revenue lost within county; reimbursed; manner; distribution.

The county treasurer shall, on or before November 30 of each year, certify to the Tax Commissioner the total tax revenue that will be lost to all taxing agencies within his or her county from taxes levied and assessed in that year because of exemptions allowed under sections 77-3501 to 77-3529. The county treasurer may amend the certification to show any change or correction in the total tax that will be lost until May 30 of the next succeeding year. If a homestead exemption is approved, denied, or corrected by the Tax Commissioner under subsection (2) of section 77-3517 after May 1 of the next year, the county treasurer shall prepare and submit amended reports to the Tax Commissioner and the political subdivisions covering any affected year and shall adjust the reimbursement to the county and the other political subdivisions by adjusting the reimbursement due under this section in later years. The Tax Commissioner shall, on or before January 1 next following such certification or within thirty days of any amendment to the certification, notify the Director of Administrative Services of the amount so certified to be reimbursed by the state. Reimbursement of the funds lost shall be made to each county according to the certification and shall be distributed in six as nearly as possible equal monthly payments on the last business day of each month beginning in January. The State Treasurer shall, on the business day preceding the last business day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The Director of Administrative Services shall, on the last business day of each month, draw warrants against funds appropriated. Out of the amount so received the county treasurer shall distribute to each of the taxing agencies within his or her county the full amount so lost by such agency, except that one percent of such amount shall be deposited in the county general fund and that the amount due a Class V school district shall be paid to the district and the county shall be compensated pursuant to section 14-554. Each taxing agency shall, in preparing its annual or biennial budget, take into account the amount to be received under this section.

Source: Laws 1979, LB 65, § 23; Laws 1983, LB 494, § 7; Laws 1986, LB 1258, § 10; Laws 1987, LB 376A, § 16; Laws 1994, LB 902, § 42; Laws 1995, LB 499, § 3; Laws 1996, LB 1040, § 5; Laws 1997, LB 397, § 32; Laws 2000, LB 1116, § 17; Laws 2009, LB166, § 18; Laws 2014, LB1087, § 19.
Operative date January 1, 2015.

77-3529 Homestead; exemption; application; denied; other exemption allowed.

If any application for exemption pursuant to sections 77-3501 to 77-3529 is denied and the applicant would be qualified for any other exemption under such sections, then such denied application shall be treated as an application for the highest exemption for which qualified. Any additional documentation necessary for such other exemption shall be submitted to the county assessor within a reasonable time after receipt of the notice of denial.

Source: Laws 1979, LB 65, § 29; Laws 1983, LB 195, § 10; Laws 1984, LB 809, § 14; Laws 1987, LB 376A, § 18; Laws 1989, LB 84, § 17; Laws 1994, LB 902, § 43; Laws 2014, LB1087, § 20.
Operative date January 1, 2015.

ARTICLE 38
FINANCIAL INSTITUTION TAXATION

Section

77-3806. Franchise tax; filing requirements; general provisions applicable; refunds; credit.

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, the Nebraska Job Creation and Mainstreet Revitalization Act, and the New Markets Job Growth Investment Act.

Source: Laws 1986, LB 774, § 6; Laws 1990, LB 1241, § 16; Laws 2001, LB 433, § 7; Laws 2007, LB367, § 25; Laws 2012, LB1128, § 25; Laws 2014, LB191, § 21.
Effective date July 18, 2014.

Cross References

Community Development Assistance Act, see section 13-201.

Nebraska Job Creation and Mainstreet Revitalization Act, see section 77-2901.

New Markets Job Growth Investment Act, see section 77-1101.

ARTICLE 39

UNIFORM STATE TAX LIEN REGISTRATION AND ENFORCEMENT

(a) **UNIFORM STATE TAX LIEN REGISTRATION AND ENFORCEMENT ACT**

Section

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.

Section

(b) TAX COMMISSIONER POWERS

77-3910. Tax Commissioner; agreement with financial institution authorized; report.

(a) UNIFORM STATE TAX LIEN REGISTRATION
AND ENFORCEMENT ACT**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)(a) This subdivision applies until January 1, 2018. 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 two times the fee required for recording instruments with the register of deeds as provided in section 33-109. 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 the fee required for recording instruments with the register of deeds as provided in section 33-109. The Secretary of State shall deposit each fee received pursuant to this subdivision in the Uniform Commercial Code Cash Fund. Of the fees received and deposited pursuant to this subdivision, the Secretary of State shall remit the fee required for recording instruments with the register of deeds as provided in

section 33-109 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.

(b) This subdivision applies on and after January 1, 2018. 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 subdivision in the Uniform Commercial Code Cash Fund. Of the fees received and deposited pursuant to this subdivision, 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; Laws 2012, LB14, § 7.

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 or one year after the expiration of an agreement between the Tax Commissioner and a taxpayer for payment of tax which is due, whichever is later, 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 or within one year after the expiration of an agreement between the Tax Commissioner and a taxpayer for payment of tax which is due, whichever is later. 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 time period in subdivision (2)(a) of this section, the notice shall be filed for record within the time 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; Laws 2014, LB33, § 2.
Effective date July 18, 2014.

77-3905 Action to collect delinquent amount; procedures; evidence; satisfaction of amount; trust fund; when constituted.

(1) Except as provided in section 77-3904, 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; Laws 2014, LB33, § 3.
Effective date July 18, 2014.

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. The Tax Commissioner may also issue a levy to a financial institution pursuant to section 77-3910.

(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 financial institution in accordance with section 77-3910 or 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 mailed 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 distraint 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; Laws 2012, LB727, § 48; Laws 2014, LB33, § 4.
Effective date July 18, 2014.

(b) TAX COMMISSIONER POWERS

77-3910 Tax Commissioner; agreement with financial institution authorized; report.

The Tax Commissioner may enter into an agreement with one or more financial institutions in this state to levy upon personal property belonging to a taxpayer in accordance with the Uniform State Tax Lien Registration and Enforcement Act and in any medium and format to which the Tax Commissioner and the financial institution have agreed. The Tax Commissioner shall issue a report to the Revenue Committee of the Legislature, the Clerk of the Legislature, and the Governor by November 1, 2015, containing the Tax Commissioner's preliminary findings regarding implementation of this section and recommendations for any needed changes. The report submitted to the committee and to the Clerk of the Legislature shall be submitted electronically.

Source: Laws 2014, LB33, § 1.
Effective date July 18, 2014.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

ARTICLE 40

TOBACCO PRODUCTS TAX

Section

77-4015. Return; review; deficiency; notice.

77-4016. Failure to file return; return and assessment by Tax Commissioner; notice.

77-4020. Final decision; notification; appeal.

77-4022. Tax; interest; penalty.

77-4015 Return; review; deficiency; notice.

As soon as practicable after any return is filed, the Tax Commissioner shall examine the return. If the Tax Commissioner, in his or her judgment, finds that the return is incorrect and any amount of tax due from the licensee is unpaid, he or she shall notify the licensee of the deficiency. Such notice shall be mailed to the licensee.

Source: Laws 1987, LB 730, § 15; Laws 2012, LB727, § 49.

77-4016 Failure to file return; return and assessment by Tax Commissioner; notice.

(1) If any licensee fails to file a return within the time prescribed, the Tax Commissioner may make a return for the licensee from his or her own knowledge and from such information as he or she can obtain through investigation and inspection or otherwise and shall assess a tax on such basis.

(2) Such tax shall be paid within ten days after the Tax Commissioner mails a written notice of the amount to the licensee. Any such return and assessment made by the Tax Commissioner on account of the failure of the licensee to make a return shall be deemed prima facie correct and valid, and the licensee shall have the burden of establishing that such return and assessment is incorrect or invalid in any action or proceeding based on such return and assessment.

Source: Laws 1987, LB 730, § 16; Laws 2012, LB727, § 50.

77-4020 Final decision; notification; appeal.

Within a reasonable time after the hearing pursuant to section 77-4019, the Tax Commissioner shall make a final decision or final determination and notify the licensee by mail of such decision or determination. If any tax or additional tax becomes due, such notice shall be accompanied by a demand for payment of any tax due. A licensee may appeal the decision of the Tax Commissioner, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1987, LB 730, § 20; Laws 1988, LB 352, § 162; Laws 2012, LB727, § 51.

Cross References

Administrative Procedure Act, see section 84-920.

77-4022 Tax; interest; penalty.

(1) Any tax imposed by section 77-4008 which is not paid on the due date shall become delinquent, and a penalty of twenty-five percent shall be added

thereto, and shall bear interest at the rate prescribed by section 45-104.02, as such rate may from time to time be adjusted, from the due date until paid.

(2) In addition to the penalty provided in subsection (1) of this section, if the Tax Commissioner finds that a licensee has made a false and fraudulent return with intent to evade the Tobacco Products Tax Act, the Tax Commissioner shall assess a penalty of twenty-five percent of the entire tax due for which the false and fraudulent return was made, excluding interest.

Source: Laws 1987, LB 730, § 22; Laws 1992, Fourth Spec. Sess., LB 1, § 39; Laws 2014, LB33, § 5.
Effective date July 18, 2014.

ARTICLE 41

EMPLOYMENT AND INVESTMENT GROWTH ACT

Section

77-4110. Annual report; contents; joint hearing.

77-4110 Annual report; contents; joint hearing.

(1) The Tax Commissioner shall submit electronically an annual report to the Legislature no later than July 15 of each year. The Department of Revenue shall, on or before September 1 of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

(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; Laws 2012, LB782, § 138; Laws 2013, LB612, § 4.

ARTICLE 42
PROPERTY TAX CREDIT ACT

Section

77-4212. Property tax credit; county treasurer; duties; disbursement to counties; State Treasurer; duties.

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; Laws 2014, LB1087, § 21.
Operative date January 1, 2015.

ARTICLE 43

MARIJUANA AND CONTROLLED SUBSTANCES TAX

Section

- 77-4310.03. Marijuana and Controlled Substances Tax Administration Cash Fund; created; use; investment.
- 77-4312. Jeopardy determination; petition for redetermination; procedure; deficiency; interest; seized property; sale; when; procedure; return of property; conditions; injunction; Tax Commissioner; powers.

77-4310.03 Marijuana and Controlled Substances Tax Administration Cash Fund; created; use; investment.

There is hereby created the Marijuana and Controlled Substances Tax Administration Cash Fund. Money in the fund shall be used by the Tax Commissioner for the purposes of administering, collecting, and enforcing the tax imposed by section 77-4303, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Marijuana and Controlled Substances Tax Administration Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1991, LB 773, § 32; Laws 1994, LB 1066, § 87; Laws 2009, First Spec. Sess., LB3, § 56.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

77-4312 Jeopardy determination; petition for redetermination; procedure; deficiency; interest; seized property; sale; when; procedure; return of property; conditions; injunction; Tax Commissioner; powers.

(1) Any person who receives a notice of jeopardy determination of the tax imposed by section 77-4303 may petition the Tax Commissioner for a redetermination of the amount of the assessed deficiency.

(2) The petition for redetermination shall be filed within ten days of the receipt of the notice of jeopardy determination whenever service is in person or within ten days of the mailing of such notice to the last-known address of the person.

(3) The petition for redetermination shall be in writing and shall state the specific grounds upon which the claim is founded.

(4) The petition for redetermination shall be accompanied by the payment of the tax or suitable security for the payment of the tax.

(5) The consideration of the petition for redetermination shall be made pursuant to the Administrative Procedure Act to the extent the act is not in conflict with sections 77-4301 to 77-4316.

(6) The determination of the amount of the deficiency shall become final and the amount shall be deemed to be assessed on the date provided in subsection (2) of this section if the person fails to file the petition for the redetermination and the appropriate security within the ten-day time period.

(7) When a petition for redetermination and the appropriate security is filed within the ten-day period, the amount of the deficiency shall be deemed to be

assessed upon the date the determination of the Tax Commissioner becomes final.

(8) If the amount of the deficiency determined under such sections is not paid upon the receipt of the notice, the deficiency shall accrue interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, for the period from the date the tax was due until the date such deficiency is paid.

(9)(a) When a jeopardy determination or any other final determination has been made by the Tax Commissioner, the property seized for collection of the taxes and any penalty shall not be sold until the time has expired for filing an appeal. If an appeal has been filed, no sale shall be made unless the taxes and any penalty remain unpaid for a period of more than thirty days after final determination of the appeal by the district court.

(b) Notwithstanding subdivision (a) of this subsection, seized property may be sold if the taxpayer consents in writing to the sale or the Tax Commissioner determines that the property is perishable or may become greatly reduced in price or value by keeping or that such property cannot be kept without great expense.

(c) The property seized shall be returned by the Tax Commissioner if the owner gives a surety bond equal to the appraised value of the owner's interest in the property, as determined by the Tax Commissioner, or deposits with the Tax Commissioner security in such form and amount as the Tax Commissioner deems necessary to insure payment of the liability but not more than twice the liability.

(d) Notwithstanding any other provision to the contrary, if a levy or sale pursuant to this section would irreparably injure rights in property which the court determines to be superior to rights of the state in such property, the district court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

(e) Any action taken by the Tax Commissioner pursuant to this section shall not constitute an election by the state to pursue a remedy to the exclusion of any other remedy.

(f) After the Tax Commissioner has seized the property of any person, that person may, upon giving forty-eight hours notice to the Tax Commissioner and to the court, bring a claim for equitable relief before the district court for the release of the property to the taxpayer upon such terms and conditions as the court deems equitable.

(10) If the taxpayer ignores all demands for payment, the Tax Commissioner may employ the services of any qualified collection agency or attorney and pay fees for such services out of any money recovered.

Source: Laws 1990, LB 260, § 12; Laws 1991, LB 773, § 34; Laws 1992, Fourth Spec. Sess., LB 1, § 40; Laws 1993, LB 161, § 5; Laws 2012, LB727, § 52.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 45

RENTAL OF MOTOR VEHICLES

Section

77-4501. Rental company; collect fee; when; use; effect on growth limit on budget; collection.

77-4501 Rental company; collect fee; when; use; effect on growth limit on budget; collection.

(1) Except as provided in subsection (6) of this section, rental companies engaged in the business of renting private passenger motor vehicles used to carry fifteen passengers or less for periods of thirty-one days or less shall collect, at the time the vehicle is rented in Nebraska, a fee not to exceed five and seventy-five hundredths percent of each rental contract amount, not including sales tax. For purposes of this section, a vehicle is rented in Nebraska if it is picked up by the renter in Nebraska. The fee shall be computed in accordance with the method used for the sales tax imposed by the state on those charges subject to sales tax. The fee shall not be subject to sales tax. The fee shall be noted in the rental contract and collected in accordance with the terms of the contract. The fee shall be retained by the vehicle owner or the rental company engaged in the business of renting private passenger motor vehicles. Fees collected pursuant to this section shall be used by the vehicle owner or the rental company for reimbursement of the amount of motor vehicle taxes and fees imposed and paid in Nebraska upon the vehicles by the vehicle owner or rental company.

(2) On February 15 of each year, the fees imposed by this section for the preceding calendar year, to the extent the fees exceed the motor vehicle taxes and fees imposed and paid in Nebraska upon the vehicles for the preceding calendar year, shall be due and payable to the county treasurer of the county where the transactions occurred. The fee shall be remitted on forms prescribed by the county treasurer. The county shall allocate and distribute such proceeds in the same manner as the proceeds from motor vehicle taxes are allocated and distributed pursuant to section 60-3,186. The revenue received by the county under this section may be expended for any lawful purpose.

(3) The revenue received by the county under this section shall be included and considered as proceeds of motor vehicle taxes and fees for purposes of any growth limitation on budgets of political subdivisions funded by property taxes.

(4) The fee imposed under this section shall be in addition to any other tax or fee authorized by law to be levied on the business activities described in this section and shall be in addition to the sales tax imposed by the state or any municipality.

(5) The county treasurer, county board, and county sheriff may use any method specified in Chapter 77, article 17, for the collection of property taxes to collect the fee imposed by this section.

(6) A fee shall not be collected if the renter is exempt from the payment of sales tax.

Source: Laws 1993, LB 345, § 79; Laws 1993, LB 346, § 21; Laws 1994, LB 1083, § 1; Laws 1997, LB 271, § 52; Laws 2005, LB 274, § 279; Laws 2014, LB251, § 1.
Operative date October 1, 2014.

ARTICLE 46
REVENUE FORECASTING

Section

77-4601. Estimate of General Fund net receipts; certification by Tax Commissioner and Legislative Fiscal Analyst.

77-4601 Estimate of General Fund net receipts; certification by Tax Commissioner and Legislative Fiscal Analyst.

On or before July 15 of each year, the Tax Commissioner and the Legislative Fiscal Analyst shall certify the monthly estimate of General Fund net receipts for each month of the current fiscal year. Such certification shall be filed electronically with the Clerk of the Legislature. The certification shall include estimates of gross receipts to the General Fund and refunds for sales, corporate income, individual income, and other miscellaneous receipts and refunds by month. The total of the monthly estimates for the fiscal year shall take into consideration the most recent net receipts forecast provided during a regular legislative session by the Nebraska Economic Forecasting Advisory Board pursuant to section 77-27,158 plus any revisions due to legislation enacted which has an impact on receipts that were not included in the forecast. If the total of monthly estimates so certified is at variance with the estimates of the Nebraska Economic Forecasting Advisory Board, the certification shall include a statement of the specific statistical or economic reasons for the variance.

Source: Laws 1993, LB 38, § 1; Laws 2013, LB222, § 31.

ARTICLE 49
QUALITY JOBS ACT

Section

77-4933. Report; contents; joint hearing.

77-4933 Report; contents; joint hearing.

(1) The Department of Revenue shall submit electronically 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. The department shall, on or before September 1 of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

(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; Laws 2012, LB782, § 139; Laws 2013, LB612, § 5.

ARTICLE 50

TAX EQUALIZATION AND REVIEW COMMISSION ACT

Section

- 77-5001. Act, how cited.
- 77-5003. Tax Equalization and Review Commission; created; commissioners; term; salary.
- 77-5004. Commissioner; qualifications; conflict of interests; continuing education; expenses.
- 77-5005. Commission; meetings; quorum; orders.
- 77-5007. Commission; powers and duties.
- 77-5008. Commission; writs of mandamus; costs.
- 77-5013. Commission; jurisdiction; time for filing; filing fee.
- 77-5015. Appeals; hearing; notice.
- 77-5015.01. Appeal; petition; commission; powers; other parties; service.
- 77-5015.02. Single commissioner hearing; evidence; record; rehearing.
- 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; publication on web site; correction of errors.
- 77-5019. Appeals; judicial review; procedure.
- 77-5022. Commission; annual meeting; powers and duties.
- 77-5024.01. Notice; contents.
- 77-5027. Commission; change valuation; Property Tax Administrator; duties.
- 77-5031. Tax Equalization and Review Commission Cash Fund; created; use; investment.

77-5001 Act, how cited.

Sections 77-5001 to 77-5031 shall be known and may be cited as the Tax Equalization and Review Commission Act.

Source: Laws 1995, LB 490, § 1; Laws 1997, LB 270, § 100; Laws 1997, LB 397, § 34; Laws 1998, LB 1104, § 23; Laws 2003, LB 291, § 4; Laws 2004, LB 973, § 46; Laws 2011, LB384, § 20.

77-5003 Tax Equalization and Review Commission; created; commissioners; term; salary.

(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. Prior to July 1, 2011, the commission shall have four commissioners, one commissioner from each congressional district and one at-large commissioner. On July 1, 2011, the term of each commissioner shall expire, and thereafter the commission shall have three commissioners, one from each congressional district, with terms as provided in subsection (2) of this section. All commissioners shall be appointed by the Governor with the approval of a majority of the members of the Legislature. The salaries of the commissioners shall be fixed by the Governor.

(2) The term of the commissioner from district 1 expires January 1, 2016, the term of the commissioner from district 2 expires January 1, 2018, and the term of the commissioner from district 3 expires January 1, 2014. After the terms of the commissioners are completed as provided in this subsection, 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 appoint-

ment 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 commission shall designate pursuant to rule and regulation its chairperson and vice-chairperson on a two-year, rotating basis.

(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, LB167, § 4; Laws 2011, LB384, § 21.

77-5004 Commissioner; qualifications; conflict of interests; continuing education; expenses.

(1) Each commissioner shall be a qualified voter and resident of the state and 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) At least one commissioner shall possess the certification or training required to become a licensed residential real property appraiser as set forth in section 76-2230.

(4) At least one commissioner 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 inconsis-

tent 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) Each commissioner shall annually attend a seminar or class of at least two days' duration that is:

(a) 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

(b) Pertaining to management, law, civil or administrative procedure, or other knowledge or skill necessary for performing the duties of the office.

(7) Each commissioner 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.

(8) The commissioners shall be considered employees of the state for purposes of sections 81-1320 to 81-1328 and 84-1601 to 84-1615.

(9) 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; Laws 2008, LB965, § 20; Laws 2010, LB931, § 25; Laws 2011, LB384, § 22.

77-5005 Commission; meetings; quorum; orders.

(1) Within ten days after appointment, the commissioners shall meet at their office in Lincoln, Nebraska, and enter upon the duties of their office.

(2) A majority of the commission shall at all times constitute a quorum to transact business, and one vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

(3) Any investigation, inquiry, or hearing held or undertaken by the commission may be held or undertaken by a single commissioner in those appeals designated for hearing pursuant to section 77-5015.02.

(4) All investigations, inquiries, hearings, and decisions of a single commissioner and every order made by a single commissioner shall be deemed to be the order of the commission, except as provided in subsection (6) of section 77-5015.02. The full commission, on an application made within thirty days after the date of an order, may grant a rehearing and determine de novo any decisions of or orders made by the commission. The commission, on an application made within thirty days after the date of an order issued after a hearing by a single commissioner, except for an order dismissing an appeal or petition for failure of the appellant or petitioner to appear at a hearing on the merits, shall grant a rehearing on the merits before the commission. The thirty-day filing period for appeals under subsection (2) of section 77-5019 shall be tolled while a motion for rehearing is pending.

(5) All hearings or proceedings of the commission shall be open to the public.

(6) The Open Meetings Act applies only to hearings or proceedings of the commission held pursuant to the rulemaking authority of the commission.

Source: Laws 1995, LB 490, § 5; Laws 1998, LB 1104, § 25; Laws 2001, LB 465, § 5; Laws 2003, LB 291, § 6; Laws 2004, LB 821, § 23; Laws 2005, LB 15, § 7; Laws 2011, LB384, § 23.

Cross References

Open Meetings Act, see section 84-1407.

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 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 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 made under section 77-1330;

(10) Any other decision of any county board of equalization;

(11) Any other decision of the Tax Commissioner regarding property valuation, exemption, or taxation;

(12) Decisions of the Tax Commissioner pursuant to section 77-3520;

(13) Final decisions of a county board of equalization appealed by the Tax Commissioner or Property Tax Administrator pursuant to section 77-701;

(14) The requirement under section 77-1314 that the income approach, including the use of a discounted cash-flow analysis, be used by county assessors; and

(15) 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; Laws 2010, LB877, § 7; Laws 2011, LB384, § 24; Laws 2014, LB191, § 22.
Effective date July 18, 2014.

77-5008 Commission; writs of mandamus; costs.

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.

Source: Laws 1995, LB 490, § 8; Laws 2007, LB334, § 97; Laws 2011, LB384, § 25.

77-5013 Commission; jurisdiction; time for filing; filing fee.

(1) The commission obtains exclusive jurisdiction over an appeal or petition when:

- (a) The commission has the power or authority to hear the appeal or petition;
- (b) An appeal or petition is timely filed;
- (c) The filing fee, if applicable, is timely received and thereafter paid; and
- (d) In the case of an appeal, a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.

Only the requirements of this subsection shall be deemed jurisdictional.

(2) A petition, an appeal, or the information required by subdivision (1)(d) of this section is timely filed and the filing fee, if applicable, is timely received if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the commission, or received by the commission, on or before the date specified by law for filing the appeal or petition. If no date is otherwise provided by law, then an appeal shall be filed within thirty days after the decision, order, determination, or action appealed from is made.

(3) The filing fee for each appeal or petition filed with the commission is twenty-five dollars, except that no filing fee shall be required for an appeal by a county assessor, the Tax Commissioner, or the Property Tax Administrator acting in his or her official capacity or a county board of equalization acting in its official capacity.

(4) The form and requirements for execution of an appeal or petition may be specified by the commission in its rules and regulations.

Source: Laws 1995, LB 490, § 13; Laws 1998, LB 1104, § 28; Laws 2001, LB 170, § 21; Laws 2004, LB 973, § 49; Laws 2010, LB877, § 8.

77-5015 Appeals; hearing; notice.

In any case appealed to the commission all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time and place of the hearing. Opportunity shall be afforded all parties to present evidence and argument. The commission shall prepare an official record, which includes testimony and exhibits, in each case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purposes of rehearing, in which event the transcript and record shall be furnished by the commission upon request and tender of the cost of preparation. Informal disposition may also be made of any case by stipulation, agreed settlement, consent order, or default.

Source: Laws 1995, LB 490, § 15; Laws 1999, LB 140, § 3; Laws 2003, LB 291, § 8; Laws 2004, LB 973, § 50; Laws 2011, LB384, § 26.

77-5015.01 Appeal; petition; commission; powers; other parties; service.

The commission may determine an appeal or petition before it when it can be done without prejudice to the rights of others or by saving such rights; but when a determination of the appeal or petition cannot be had without the presence of other parties, the commission shall serve such other parties with notice of the proceeding.

Source: Laws 2011, LB384, § 27.

77-5015.02 Single commissioner hearing; evidence; record; rehearing.

(1) A single commissioner may hear an appeal and cross appeal and appeals and cross appeals consolidated with any such appeal and cross appeal when:

(a) The taxable value of each parcel is one million dollars or less as determined by the county board of equalization; and

(b) The appeal and cross appeal has been designated for hearing pursuant to this section by the chairperson of the commission or in such manner as the commission may provide in its rules and regulations.

(2) A proceeding held before a single commissioner shall be informal. The usual common-law or statutory rules of evidence, including rules of hearsay, shall not apply, and the commissioner may consider and utilize all matters presented at the proceeding in making his or her determination.

(3) Any party to an appeal designated for hearing before a single commissioner pursuant to this section may, prior to a hearing, elect in writing to have the appeal heard by the commission. The commissioner conducting a proceeding pursuant to this section may at any time designate the appeal for hearing by the commission.

(4) Documents necessary to establish jurisdiction of the commission shall constitute the record of a proceeding before a single commissioner. No recording shall be made of a proceeding before a single commissioner.

(5) A party to a proceeding before a single commissioner may request a rehearing pursuant to section 77-5005.

(6) An order entered by a single commissioner pursuant to this section may not be appealed pursuant to section 77-5019 or any other provision of law.

(7) Subdivisions (3), (6), (8), (9), (10), (11), and (12) of section 77-5016 apply to proceedings before a single commissioner.

Source: Laws 2011, LB384, § 28.

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:

(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;

(4) All evidence, other than that described in subdivision (3) of this section, 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;

(5) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence;

(6) 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;

(7) 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;

(8) 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;

(9) 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;

(10) 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;

(11) 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;

(12) 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 (a) the appellant is the county assessor or county clerk in which case the costs shall be paid by the county or (b) the appellant is the Tax Commissioner or Property Tax Administrator in which case the costs shall be paid by the state;

(13) 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; and

(14) Subdivisions (3), (6), (8), (9), (10), (11), and (12) of this section apply to hearings or proceedings before a single commissioner pursuant to section 77-5015.02.

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; Laws 2010, LB877, § 9; Laws 2011, LB384, § 29.

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 (10) or (11) 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 determine the taxable value of the property pursuant to section 77-1507, send notice of the taxable value pursuant to section 77-1507 within ninety days after the date the commission's order is certified pursuant to section 77-5018, and apply interest at the rate specified in section 45-104.01, 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 as provided in section 77-1507.

Source: Laws 1995, LB 490, § 17; Laws 2001, LB 419, § 2; Laws 2004, LB 973, § 61; Laws 2007, LB167, § 7; Laws 2011, LB384, § 30.

77-5018 Appeals; decisions and orders; requirements; publication on web site; 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 to each party or his or her attorney of record. Within seven days of issuing a decision and order, the commission shall electronically publish such decision and order on a web site maintained by the commission that is accessible to the general public. The full text of final decisions and orders shall be published on the web site, except that final decisions and orders that are entered (a) on a dismissal by the appellant or petitioner, (b) on a default order when the appellant or petitioner failed to appear, (c) by agreement of the parties, or (d) by a single commissioner

pursuant to section 77-5015.02 may be published on the web site in a summary manner identifying the parties, the case number, and the basis for the final decision and order. 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.

(3) The Tax Commissioner or the Property Tax Administrator shall have thirty days after a final decision of the commission to appeal the commission's decision pursuant to section 77-5019.

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; Laws 2010, LB877, § 10; Laws 2011, LB384, § 31.

77-5019 Appeals; judicial review; procedure.

(1) Any party aggrieved by a final decision in a case appealed to the commission, any party aggrieved by a final decision of the commission on a petition, any party aggrieved by an order of the commission issued pursuant to section 77-5020 or sections 77-5023 to 77-5028, or any party aggrieved by a final decision of the commission appealed by the Tax Commissioner or the Property Tax Administrator pursuant to section 77-701 shall be entitled to judicial review in the Court of Appeals. Upon request of the county, the Attorney General may appear and represent the county or political subdivision in cases in which the commission is not a party. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

(2)(a) Proceedings for review shall be instituted by filing a petition and the appropriate docket fees in the Court of Appeals:

(i) Within thirty days after the date on which a final appealable order is entered by the commission; or

(ii) For orders issued pursuant to section 77-5028, within thirty days after May 15 or thirty days after the date ordered pursuant to section 77-1514, whichever is later.

(b) All parties of record shall be made parties to the proceedings for review. The commission shall only be made a party of record if the action complained of is an order issued by the commission pursuant to section 77-1504.01 or 77-5020 or sections 77-5023 to 77-5028. Summons shall be served on all parties within thirty days after the filing of the petition in the manner provided for service of a summons in a civil action. The court, in its discretion, may permit other interested persons to intervene. No bond or undertaking is required for an appeal to the Court of Appeals.

(c) A petition for review shall set forth: (i) The name and mailing address of the petitioner; (ii) the name and mailing address of the county whose action is at issue or the commission; (iii) identification of the final decision at issue

together with a duplicate copy of the final decision; (iv) the identification of the parties in the case that led to the final decision; (v) the facts to demonstrate proper venue; (vi) the petitioner's reasons for believing that relief should be granted; and (vii) a request for relief, specifying the type and extent of the relief requested.

(3) The filing of the petition or the service of summons upon the commission shall not stay enforcement of a decision. The commission may order a stay. The court may order a stay after notice of the application for the stay to the commission and to all parties of record. The court may require the party requesting the stay to give bond in such amount and conditioned as the court directs.

(4) Upon receipt of a petition the date for submission of the official record shall be determined by the court. The commission shall prepare a certified copy of the official record of the proceedings had before the commission in the case. The official record shall include: (a) Notice of all proceedings; (b) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the commission pertaining to the case; (c) the transcribed record of the hearing before the commission, including all exhibits and evidence introduced during the hearing, a statement of matters officially noticed by the commission during the proceeding, and all proffers of proof and objections and rulings thereon; and (d) the final order appealed from. The official record in an appeal of a commission decision issued pursuant to sections 77-5023 to 77-5028 may be limited by the request of a petitioner to those parts of the record pertaining to a specific county. The commission shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. If payment is required, payment of the cost, as estimated by the commission, for preparation of the official record shall be paid to the commission prior to preparation of the official record and the commission shall not transmit the official record to the court until payment of the actual costs of its preparation is received.

(5) The review shall be conducted by the court for error on the record of the commission. If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the commission, the court may remand the case to the commission for further proceedings. The court may affirm, reverse, or modify the decision of the commission or remand the case for further proceedings.

(6) Appeals under this section shall be given precedence over all civil cases.

Source: Laws 1995, LB 490, § 19; Laws 1997, LB 165, § 4; Laws 1999, LB 140, § 5; Laws 2000, LB 968, § 76; Laws 2001, LB 465, § 9; Laws 2005, LB 15, § 11; Laws 2006, LB 808, § 42; Laws 2008, LB965, § 21; Laws 2010, LB877, § 11; Laws 2011, LB384, § 32.

77-5022 Commission; annual meeting; powers and duties.

The commission shall annually equalize the assessed value or special value of all real property as submitted by the county assessors on the abstracts of assessments and equalize the values of real property that is valued by the state. The commission shall have the power to recess from time to time until the

equalization process is complete. Meetings held pursuant to this section may be held by means of videoconference or telephone conference.

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, § 77-505; Laws 1969, c. 653, § 1, p. 2569; Laws 1987, LB 508, § 18; Laws 1992, LB 1063, § 57; Laws 1992, Second Spec. Sess., LB 1, § 55; R.S.1943, (1996), § 77-505; Laws 1997, LB 397, § 40; Laws 1999, LB 140, § 6; Laws 2003, LB 291, § 12; Laws 2004, LB 973, § 63; Laws 2006, LB 808, § 43; Laws 2009, LB166, § 19; Laws 2011, LB384, § 33.

77-5024.01 Notice; contents.

The commission shall give notice of the time and place of the first meeting held pursuant to sections 77-5022 to 77-5028 by publication in a newspaper of general circulation in the State of Nebraska. Such notice shall contain a statement that the agenda shall be readily available for public inspection at the principal office of the commission during normal business hours. The agenda shall be continually revised to remain current. The commission may thereafter modify the agenda and need only provide notice of the meeting to the affected counties in the manner provided in section 77-5026. The commission shall publish in its notice a list of those counties certified under section 77-5027 as having assessments which may fail to satisfy the requirements of law. The notice shall also contain a statement advising that any petition brought by a county board of equalization pursuant to section 77-1504.01 to adjust the value of a class or subclass of real property will be heard between July 26 and August 10 at a date, time, and place as provided in the agenda maintained by the commission.

Source: Laws 2003, LB 291, § 11; Laws 2005, LB 261, § 9; Laws 2011, LB384, § 34.

77-5027 Commission; change valuation; Property Tax Administrator; duties.

(1) The commission shall, pursuant to section 77-5026, raise or lower the valuation of any class or subclass of real property in a county when it is necessary to achieve equalization.

(2) On or before nineteen days following the final filing due date for the abstract of assessment for real property pursuant to section 77-1514, the Property Tax Administrator shall prepare and deliver to the commission and to each county assessor his or her annual reports and opinions. Beginning January 1, 2014, for any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the reports or opinions shall be prepared and delivered on or before fifteen days following such final filing due date.

(3) The annual reports and opinions of the Property Tax Administrator shall contain statistical and narrative reports informing the commission of the level of value and the quality of assessment of the classes and subclasses of real property within the county and a certification of the opinion of the Property Tax Administrator regarding the level of value and quality of assessment of the classes and subclasses of real property in the county.

(4) In addition to an opinion of level of value and quality of assessment in the county, the Property Tax Administrator may make nonbinding recommendations for consideration by the commission.

(5) The Property Tax Administrator shall employ the methods specified in section 77-112, the comprehensive assessment ratio study specified in section 77-1327, other statistical studies, and an analysis of the assessment practices employed by the county assessor. If necessary to determine the level of value and quality of assessment in a county, the Property Tax Administrator may use sales of comparable real property in market areas similar to the county or area in question or from another county as indicators of the level of value and the quality of assessment in a county. The Property Tax Administrator may use any other relevant information in providing the annual reports and opinions to the commission.

Source: Laws 1969, c. 628, § 1, p. 2528; Laws 1987, LB 508, § 22; Laws 1988, LB 1207, § 1; Laws 1989, LB 361, § 6; Laws 1995, LB 490, § 57; Laws 1997, LB 342, § 2; R.S.1943, (1996), § 77-508.01; Laws 1997, LB 397, § 45; Laws 2001, LB 170, § 26; Laws 2004, LB 973, § 65; Laws 2005, LB 263, § 15; Laws 2011, LB384, § 35.

77-5031 Tax Equalization and Review Commission Cash Fund; created; use; investment.

The Tax Equalization and Review Commission Cash Fund is hereby created. All money received by the commission for appeals and services performed and billed to other agencies or persons shall be credited to the fund. The commission shall only bill for the actual amount expended in performing services. The fund shall be used to carry out the provisions of the Tax Equalization and Review Commission Act, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Expenditures from the Tax Equalization and Review Commission Cash Fund shall be made only when such funds are available. Any unexpended balance in the fund at the end of each fiscal year shall not lapse to the General Fund. Any money in the Tax Equalization and Review Commission 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 1997, LB 270, § 101; Laws 2009, First Spec. Sess., LB3, § 57.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

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

ARTICLE 52

BEGINNING FARMER TAX CREDIT ACT

Section

77-5204. Beginning Farmer Board; created; duties.

77-5210. Board; annual report.

77-5214. Board; support and assistance.

77-5204 Beginning Farmer Board; created; duties.

For the purpose of developing and directing programs to provide increased and enhanced opportunities for beginning farmers and livestock producers, the

Beginning Farmer Board is created. For administrative and budgetary purposes only, the board shall be housed within the Department of Agriculture. The board shall be vested with the following duties and responsibilities:

(1) To approve and certify beginning farmers and livestock producers as eligible for the programs provided by the board, for eligibility to claim tax credits authorized by section 77-5209.01, and for eligibility to claim an exemption of taxable tangible personal property tax as provided by section 77-5209.02;

(2) To approve and certify owners of agricultural assets as eligible for the tax credits authorized by sections 77-5211 to 77-5213;

(3) To advocate joint ventures between beginning farmers or livestock producers and existing private and public credit and banking licensed institutions, as well as to advocate joint ventures with owners of agricultural assets desiring to assist beginning farmers and livestock producers seeking entry into farming or livestock production;

(4) To provide necessary and reasonable assistance and support to beginning farmers and livestock producers for qualification and participation in financial management programs approved by the board;

(5) To advocate appropriate changes in policies and programs of other public and private institutions or agencies which will directly benefit beginning farmers and livestock producers and may include changes regarding financing, taxation, and any other existing policies which prohibit or impede individuals from entering into farming or livestock production;

(6) To provide adequate explanations of facts and aspects of available programs offered or recommended by the board intended for beginning farmers and livestock producers;

(7) To assist and educate beginning farmers and livestock producers by acting as a liaison between beginning farmers or livestock producers and the Nebraska Investment Finance Authority;

(8) To encourage licensed financial institutions and individuals to use alternative amortization schedules for loans and land contracts granted to beginning farmers and livestock producers;

(9) To refer beginning farmers and livestock producers to agencies and organizations which may provide additional pertinent information and assistance;

(10) To provide any other assistance and support the board deems necessary and appropriate in order for entry into farming or livestock production;

(11) To adopt and promulgate rules and regulations necessary to carry out the purposes of the Beginning Farmer Tax Credit Act, including criteria required for tax credit eligibility and financial management program certification and guidelines which constitute a viably sized farm that is necessary to adequately support a beginning farmer or livestock producer. Such guidelines shall vary and take into account the region of the state, number of acres, land quality and type, type of operation, type of crops or livestock raised, and other factors of farming or livestock production; and

(12) To keep minutes of the board's meetings and other books and records which will adequately reflect actions and decisions of the board and to provide an annual report to the Governor, the Legislative Fiscal Analyst, and the Clerk

of the Legislature by December 1. The report submitted to the Legislative Fiscal Analyst and the Clerk of the Legislature shall be submitted electronically.

Source: Laws 1999, LB 630, § 5; Laws 2000, LB 1223, § 4; Laws 2008, LB1027, § 5; Laws 2012, LB782, § 140.

77-5210 Board; annual report.

The board shall submit an annual report of the activities and actions of the board for the preceding fiscal year to the Governor, the Legislative Fiscal Analyst, and the Clerk of the Legislature by December 1. The report submitted to the Legislative Fiscal Analyst and the Clerk of the Legislature shall be submitted electronically. Each member of the Legislature shall receive an electronic copy of such report by request to the chairperson of the board. Each report shall include the following information:

(1) A complete operating and financial statement for the board for the prior fiscal year;

(2) The number of qualified beginning farmers and livestock producers receiving assistance from the board;

(3) The number of owners of agricultural assets claiming tax credits and the monetary amount of credits granted by the board; and

(4) Any other relevant information which the board deems necessary to report.

No information furnished to the board shall be disclosed in the report in such a way as to reveal information from a tax return of any person.

Source: Laws 1999, LB 630, § 11; Laws 2000, LB 1223, § 6; Laws 2012, LB782, § 141.

77-5214 Board; support and assistance.

In order to carry out the provisions of the Beginning Farmer Tax Credit Act, the Department of Agriculture shall provide any and all of the necessary support and assistance to the board.

Source: Laws 1999, LB 630, § 15; Laws 2012, LB782, § 142.

ARTICLE 54

RURAL ECONOMIC OPPORTUNITIES ACT

Section

77-5412. Report; contents.

77-5412 Report; contents.

(1) The Tax Commissioner shall submit electronically an annual report to the Legislature no later than June 30 of each year.

(2) The report shall state by industry group (a) the credits earned, (b) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (c) the number of jobs created, (d) the total number of employees employed by taxpayers at qualifying projects on the last day of the calendar quarter prior to the application date and the total number of employees employed by the taxpayers for the projects on subsequent reporting dates, (e) the expansion of capital investment, (f) the estimated wage levels of jobs created subsequent to the application date, (g) the total number of qualified

applicants, (h) the projected future state revenue gains and losses, and (i) the credits outstanding.

(3) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2000, LB 936, § 12; Laws 2012, LB782, § 143.

ARTICLE 55

INVEST NEBRASKA ACT

Section

77-5542. Report; contents; joint hearing.

77-5544. Audit; costs; confidentiality; violation; penalty.

77-5542 Report; contents; joint hearing.

(1) The Department of Revenue shall submit electronically 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. The department shall, on or before September 1 of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

(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; Laws 2012, LB782, § 144; Laws 2013, LB612, § 6.

77-5544 Audit; costs; confidentiality; violation; penalty.

(1) By January 1, 2005, and each January 1 every five years thereafter for so long as there are companies that have qualified for benefits and remain within the entitlement period and there are sufficient companies qualified for benefits so as not to reveal confidential information that allows identification of any company, there shall be an audit to determine compliance with the Invest Nebraska Act. The Tax Commissioner shall contract with a qualified independent accounting firm to conduct the audit. The cost of the audit shall be paid from funds appropriated to the Department of Revenue by the Legislature. Such cost shall include, in addition to the fees and costs of such independent firm, the incremental costs to the department to comply with this section, as determined by the department. If a qualified independent accounting firm cannot be located or engaged to conduct such audit, then such audit shall instead be performed by the department. A qualified independent firm shall be

a firm that meets all of the following requirements: (a) The firm must be an accounting firm employing or comprised of at least ten certified public accountants who are licensed under the Public Accountancy Act to practice accounting and auditing in Nebraska; (b) the firm, at the time of the beginning of such audit, and for the period of at least twenty-four months before such audit commences, has not performed any services for any of the companies that at such time have filed applications under the Invest Nebraska Act, and the firm must agree not to engage in and to withdraw from representing any companies that file applications after such audit commences and before the audit report is issued; (c) the firm must have executed such audit contract as required by the Tax Commissioner; and (d) the firm, and all such accountants and personnel of such firm who will be involved in the audit, must have executed such confidentiality and nondisclosure agreements as required by the Tax Commissioner. In hiring such firm, the Tax Commissioner shall comply with all Nebraska laws pertaining to the selection and hiring of outside private sector services.

(2) The purpose of the audit is to examine information collected by the department in order to determine:

(a) The extent the data collected from the companies receiving benefits is verified;

(b) The extent to which the projects receiving benefits from the act are in compliance with the act initially and throughout the entitlement period;

(c) Whether the requirements of the act regarding the investment threshold have been attained and maintained by the companies;

(d) Whether and to what extent new employees are added by the companies to their workforce and employed at the project locations;

(e) Whether and to what extent the new jobs created meet the minimum compensation requirements of the act;

(f) The industry or industries in which the new jobs are created, by North American Industry Classification System Code;

(g) The extent to which the minimum new job threshold of the act has been attained and maintained by the companies;

(h) By category of spending, what is purchased by the companies that is claimed as qualified investments; and

(i) Gross sales from output of the project if reasonably determinable.

(3) After the audit is conducted, and on or before January 1, 2005, and each January 1 every five years thereafter, the auditor shall issue a report to the Legislature and Governor detailing the results of the audit. The report submitted to the Legislature shall be submitted electronically. The report shall be presented using aggregated information and other techniques so as not to reveal confidential information that allows identification of the company. The report shall not be issued until the Tax Commissioner has confirmed in writing that the report does not reveal any confidential information that allows identification of the company. For purposes of this section, confidential information includes all information that is (a) referred to as confidential in section 77-5534, (b) restricted from disclosure or treated as confidential under any federal or state law, or (c) provided by the company to the department in connection with the company's project under the act. The report shall detail all assumptions, methods, or models that were used in performing the analysis and shall report information by industry group or expenditure category so that

further analysis can be performed. The firm shall have access to all records of the department with regard to the credits granted under the act and the companies receiving such credits. Such records shall remain confidential in the hands of the firm conducting the audit and shall not be revealed to any person that is not employed by the department or the firm conducting the audit. No officer or employee of the firm conducting the audit shall disclose any information to any other person if such information is protected by federal or state confidentiality laws. Notwithstanding any other provision of this section to the contrary, neither the independent accounting firm nor any of its personnel shall be provided by the department with any confidential information except to the extent and under conditions when the department is permitted without penalty to do so under applicable federal or state laws.

(4) All information provided by the department to the independent accounting firm shall be examined only on the premises of the department and shall be stored in a secure place. The firm shall make no copies of such information. Any qualified independent accounting firm, or any personnel of the firm, which violates this section shall be guilty of a Class IV felony and, in the discretion of the court, may be assessed the costs of prosecution.

(5) Nothing in this section shall be construed to require the company to provide, or require the department to obtain from the company, any information beyond that required as part of the application or beyond that required by the department to confirm the company is entitled to the benefits of the act or to obtain the information required in subsection (2) of this section. The independent accounting firm shall not request any information from the company or its personnel. The independent accounting firm shall be permitted and expected to obtain additional outside public information available from sources outside of the company and the department in order to comply with the requirements for the report if copies of all such data, information, and sources are made available to the public or included with the report.

(6) Information obtained in connection with the audit from either the department or the company is confidential and is not discoverable or admissible in evidence in any civil action, and no department or company personnel shall be compelled to testify in regard thereto. Such information may be discovered and be admissible, and testimony compelled in regard thereto, by the department or by the company in an action relating to the determination of whether the company is entitled to the benefits of the act.

Source: Laws 2001, LB 620, § 44; Laws 2006, LB 1003, § 11; Laws 2012, LB782, § 145.

Cross References

Public Accountancy Act, see section 1-105.

ARTICLE 56 TAX AMNESTY PROGRAM

Section

77-5601. Tax amnesty program; application; department; powers and duties; Department of Revenue Enforcement Fund; Department of Revenue Enforcement Technology Fund; created; investment.

77-5601 Tax amnesty program; application; department; powers and duties; Department of Revenue Enforcement Fund; Department of Revenue Enforcement Technology Fund; created; investment.

(1) From August 1, 2004, through October 31, 2004, there shall be conducted a tax amnesty program with regard to taxes due and owing that have not been reported to the Department of Revenue. Any person applying for tax amnesty shall pay all unreported taxes that were due on or before April 1, 2004. Any person that applies for tax amnesty and is accepted by the Tax Commissioner shall have any penalties and interest waived on unreported and delinquent taxes notwithstanding any other provisions of law to the contrary.

(2) To be eligible for the tax amnesty provided by this section, the person shall apply for amnesty within the amnesty period, file a return for each taxable period for which the amnesty is requested by December 31, 2004, if no return has been filed, and pay in full all taxes for which amnesty is sought with the return or within thirty days after the application if a return was filed prior to the amnesty period. Tax amnesty shall not be available for any person that is under civil or criminal audit, investigation, or prosecution for unreported or delinquent taxes by this state or the United States Government on or before April 16, 2004.

(3) The department shall not seek civil or criminal prosecution against any person for any taxable period for which amnesty has been granted. The Tax Commissioner shall develop forms for applying for the tax amnesty program, develop procedures for qualification for tax amnesty, and conduct a public awareness campaign publicizing the program.

(4) If a person elects to participate in the amnesty program, the election shall constitute an express and irrevocable relinquishment of all administrative and judicial rights to challenge the imposition of the tax or its amount. Nothing in this section shall prohibit the department from adjusting a return as a result of any state or federal audit.

(5)(a) Except for any local option sales tax collected and returned to the appropriate municipality and any motor vehicle fuel, diesel fuel, and compressed fuel taxes, which shall be deposited in the Highway Trust Fund or Highway Allocation Fund as provided by law, no less than eighty percent of all revenue received pursuant to the tax amnesty program shall be deposited in the General Fund; ten percent, not to exceed five hundred thousand dollars, shall be deposited in the Department of Revenue Enforcement Fund; and ten percent, not to exceed five hundred thousand dollars, shall be deposited in the Department of Revenue Enforcement Technology Fund. Any amount that would otherwise be deposited in the Department of Revenue Enforcement Fund or the Department of Revenue Enforcement Technology Fund that is in excess of the five-hundred-thousand-dollar limitation shall be deposited in the General Fund.

(b) For fiscal year 2005-06, all proceeds in the Department of Revenue Enforcement Fund shall be appropriated to the department for purposes of employing investigators, agents, and auditors and otherwise increasing personnel for enforcement of the Nebraska Revenue Act of 1967. For fiscal year 2005-06, all proceeds in the Department of Revenue Enforcement Technology Fund shall be appropriated to the department for the purposes of acquiring lists, software, programming, computer equipment, and other technological methods for enforcing the act.

(c) For fiscal years after fiscal year 2005-06, twenty percent of all proceeds received during the previous calendar year due to the efforts of auditors and investigators hired pursuant to subdivision (5)(b) of this section, not to exceed seven hundred fifty thousand dollars, shall be deposited in the Department of

Revenue Enforcement Fund for purposes of employing investigators and auditors or continuing such employment for purposes of increasing enforcement of the act.

(d) Ten percent of all proceeds received during each calendar year due to the contracts entered into pursuant to section 77-367 shall be deposited in the Department of Revenue Enforcement Fund for purposes of identifying nonfilers of returns, underreporters, nonpayers of taxes, and improper or fraudulent payments.

(6)(a) The department shall prepare a report by April 1, 2005, and by February 1 of each year thereafter detailing the results of the tax amnesty program and the subsequent enforcement efforts. For the report due April 1, 2005, the report shall include (i) the amount of revenue obtained as a result of the tax amnesty program broken down by tax program, (ii) the amount obtained from instate taxpayers and from out-of-state taxpayers, and (iii) the amount obtained from individual taxpayers and from business enterprises.

(b) For reports due in subsequent years, the report shall include (i) the number of personnel hired for purposes of subdivision (5)(b) of this section and their duties, (ii) a description of lists, software, programming, computer equipment, and other technological methods acquired pursuant to such subdivision and the purposes of each, and (iii) the amount of new revenue obtained as a result of the new personnel and acquisitions during the prior calendar year, broken down into the same categories as described in subdivision (6)(a) of this section.

(7) The Department of Revenue Enforcement Fund and the Department of Revenue Enforcement Technology Fund are created. Transfers may be made from the Department of Revenue Enforcement Fund to the General Fund at the direction of the Legislature. The Department of Revenue Enforcement Fund may receive transfers from the Civic and Community Center Financing Fund at the direction of the Legislature for the purpose of administering the Sports Arena Facility Financing Assistance Act. Any money in the Department of Revenue Enforcement Fund and the Department of Revenue Enforcement Technology Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. The Department of Revenue Enforcement Technology Fund shall terminate on July 1, 2006. Any unobligated money in the fund at that time shall be deposited in the General Fund.

(8) For purposes of this section, taxes mean any taxes collected by the department, including, but not limited to state and local sales and use taxes, individual and corporate income taxes, financial institutions deposit taxes, motor vehicle fuel, diesel fuel, and compressed fuel taxes, cigarette taxes, transfer taxes, and charitable gaming taxes.

Source: Laws 2004, LB 1017, § 23; Laws 2009, First Spec. Sess., LB3, § 58; Laws 2010, LB779, § 18; Laws 2011, LB297, § 10; Laws 2011, LB642, § 2.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska Revenue Act of 1967, see section 77-2701.

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

Sports Arena Facility Financing Assistance Act, see section 13-3101.

ARTICLE 57

NEBRASKA ADVANTAGE ACT

Section

- 77-5701. Act, how cited.
77-5702. Legislative findings.
77-5703. Definitions, where found.
77-5705. Base year, defined.
77-5707. Compensation, defined.
77-5707.01. County average weekly wage, defined.
77-5707.02. Data center, defined.
77-5709. Equivalent employees, defined.
77-5712. Nebraska average weekly wage, defined.
77-5715. Qualified business, defined.
77-5719. Taxpayer, defined.
77-5720. Year, defined.
77-5723. Incentives; application; contents; fee; approval; when; agreements; contents; modification.
77-5725. Tiers; requirements; incentives; enumerated.
77-5726. Credits; use; refund claims; procedures; interest; appointment of purchasing agent; protest; appeal.
77-5727. Recapture or disallowance of incentives.
77-5728. Incentives; transfer; when; effect; disclosure of information.
77-5731. Reports; joint hearing.
77-5734. Department of Revenue; estimate of sales and use tax refunds; duties.
77-5735. Changes to sections; when effective; applicability.

77-5701 Act, how cited.

Sections 77-5701 to 77-5735 shall be known and may be cited as the Nebraska Advantage Act.

Source: Laws 2005, LB 312, § 23; Laws 2008, LB895, § 6; Laws 2009, LB403, § 10; Laws 2012, LB1118, § 1.

77-5702 Legislative findings.

The Legislature hereby finds and declares that it is the policy of this state to make revisions in Nebraska's tax structure in order to (1) encourage new businesses to relocate to Nebraska, (2) retain existing businesses and aid in their expansion, (3) promote the creation and retention of new, quality jobs in Nebraska, specifically jobs related to research and development, manufacturing, and large data centers, and (4) attract and retain investment capital in the State of Nebraska.

Source: Laws 2005, LB 312, § 24; Laws 2014, LB836, § 3.
Effective date July 18, 2014.

77-5703 Definitions, where found.

For purposes of the Nebraska Advantage Act, the definitions found in sections 77-5704 to 77-5721 shall be used.

Source: Laws 2005, LB 312, § 25; Laws 2008, LB895, § 7; Laws 2012, LB1118, § 2.

77-5705 Base year, defined.

Except for a tier 5 project that is sequential to a tier 2 large data center project, base year means the year immediately preceding the year of applica-

tion. For a tier 5 project that is sequential to a tier 2 large data center project, the base year means the last year of the tier 2 large data center project entitlement period relating to direct sales tax refunds.

Source: Laws 2005, LB 312, § 27; Laws 2012, LB1118, § 4.

77-5707 Compensation, defined.

Compensation means the wages and other payments subject to the federal medicare tax.

Source: Laws 2005, LB 312, § 29; Laws 2010, LB918, § 1.

77-5707.01 County average weekly wage, defined.

County average weekly wage for any year means the most recent average weekly wage paid by all employers in the county as reported by the Department of Labor by October 1 of the year prior to application.

Source: Laws 2008, LB895, § 8; Laws 2013, LB34, § 1.

77-5707.02 Data center, defined.

Data center means computers, supporting equipment, and other organized assembly of hardware or software that are designed to centralize the storage, management, or dissemination of data and information, environmentally controlled structures or facilities or interrelated structures or facilities that provide the infrastructure for housing the equipment, such as raised flooring, electricity supply, communication and data lines, Internet access, cooling, security, and fire suppression, and any building housing the foregoing. A data center also includes a facility described in this section for the co-location of computers.

Source: Laws 2012, LB1118, § 3.

77-5709 Equivalent employees, defined.

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. A salaried employee who receives a predetermined amount of compensation each pay period on a weekly or less frequent basis is deemed to have been paid for forty hours per week during the pay period.

Source: Laws 2005, LB 312, § 31; Laws 2013, LB34, § 2.

77-5712 Nebraska average weekly wage, defined.

Nebraska average weekly wage for any year means the most recent average weekly wage paid by all employers in all counties in Nebraska as reported by the Department of Labor by October 1 of the year prior to application.

Source: Laws 2005, LB 312, § 34; Laws 2008, LB895, § 10; Laws 2013, LB34, § 3.

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, 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 tangible personal property if the taxpayer derives at least seventy-five percent or more of the sales or revenue attributable to such activities relating to the project from sales to consumers who are not related persons and are located outside the state;

(g) 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, including sales of such services, systems, or products delivered by providing the customer with software or access to software over the Internet or by other electronic means, regardless of whether the software or data accessed by customers is stored on a computer owned by the applicant, the customer, or a third party and regardless of whether the computer storing the software or data is located at the project;

(h) The research, development, and maintenance of an Internet web portal. For purposes of this subdivision, Internet web portal means an Internet site that allows users to access, search, and navigate the Internet;

(i) The research, development, and maintenance of a data center;

(j) The production of electricity by using one or more sources of renewable energy to produce electricity for sale. For purposes of this subdivision, sources of renewable energy includes, but is not limited to, wind, solar, geothermal, hydroelectric, biomass, and transmutation of elements; or

(k) 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, including sales of such services, systems, or products delivered by providing the customer with software or access to software over the Internet or by other electronic means, regardless of whether the software or data accessed by customers is stored on a computer owned by the applicant, the customer, or a third party and regardless of whether the computer storing the software or data is located at the project; or

(d) Any combination of activities listed in this subsection.

(3) For a tier 6 project, qualified business means any business except a business excluded by subsection (4) of this section.

(4) Except for business activity described in subdivision (1)(f) of this section, 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 (a) food prepared for immediate consumption or (b) 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; Laws 2008, LB895, § 12; Laws 2009, LB164, § 4; Laws 2010, LB918, § 2; Laws 2012, LB1118, § 5; Laws 2013, LB104, § 3.

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 entity that is or would otherwise be a member of the same unitary group, if incorporated, that is subject to such sales and use taxes and 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. For purposes of this section, political subdivision includes any public corporation created for the benefit of a political subdivision and any group of political subdivisions forming a joint public agency, organized by interlocal agreement, or utilizing any other method of joint action.

Source: Laws 2005, LB 312, § 41; Laws 2006, LB 1003, § 12; Laws 2007, LB368, § 139; Laws 2010, LB918, § 3; Laws 2013, LB34, § 4.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-5720 Year, defined.

Year means calendar year.

Source: Laws 2005, LB 312, § 42; Laws 2013, LB34, § 5.

77-5723 Incentives; application; contents; fee; approval; when; agreements; contents; modification.

(1) In order to utilize the incentives set forth in the Nebraska Advantage Act, the taxpayer shall file an application, on a form developed by the Tax Commissioner, requesting an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the plan of employment and investment for a qualified business in this state;

(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and to define a project;

(c) If more than one location within this state is involved, sufficient documentation to show that the employment and investment at different locations are interdependent parts of the plan. A headquarters shall be presumed to be interdependent with each other location directly controlled by such headquarters. A showing that the parts of the plan would be considered parts of a unitary business for corporate income tax purposes shall not be sufficient to show interdependence for the purposes of this subdivision;

(d) A nonrefundable application fee of one thousand dollars for a tier 1 project, two thousand five hundred dollars for a tier 2, tier 3, or tier 5 project, five thousand dollars for a tier 4 project, and ten thousand dollars for a tier 6 project. The fee shall be credited to the Nebraska Incentives Fund; and

(e) A timetable showing the expected sales tax refunds and what year they are expected to be claimed. The timetable shall include both direct refunds due to investment and credits taken as sales tax refunds as accurately as possible.

The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, the amounts of increased employment and investment, and the information required to be reported by sections 77-5731 and 77-5734.

(3) An application must be complete to establish the date of the application. An application shall be considered complete once it contains the items listed in subsection (2) of this section, regardless of the Tax Commissioner's additional needs pertaining to information or clarification in order to approve or not approve the application.

(4) Once satisfied that the plan in the application defines a project consistent with the purposes stated in the Nebraska Advantage Act in one or more qualified business activities within this state, that the taxpayer and the plan will qualify for benefits under the act, and that the required levels of employment and investment for the project will be met prior to the end of the fourth year after the year in which the application was submitted for a tier 1, tier 3, or tier 6 project or the end of the sixth year after the year in which the application was submitted for a tier 2, tier 4, or tier 5 project, the Tax Commissioner shall approve the application. For a tier 5 project that is sequential to a tier 2 large data center project, the required level of investment shall be met prior to the end of the fourth year after the expiration of the tier 2 large data center project entitlement period relating to direct sales tax refunds.

(5) The Tax Commissioner shall make his or her determination to approve or not approve an application within one hundred eighty days after the date of the application. If the Tax Commissioner requests, by mail or by electronic means, additional information or clarification from the taxpayer in order to make his or her determination, such one-hundred-eighty-day period shall be tolled from the time the Tax Commissioner makes the request to the time he or she receives the requested information or clarification from the taxpayer. The taxpayer and the Tax Commissioner may also agree to extend the one-hundred-eighty-day period. If the Tax Commissioner fails to make his or her determination within

the prescribed one-hundred-eighty-day period, the application shall be deemed approved.

(6) Within one hundred eighty days after approval of the application, the Tax Commissioner shall prepare and mail a written agreement to the taxpayer for the taxpayer's signature. 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 plan 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 Act. 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 levels 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) A requirement that the company update the Department of Revenue annually on any changes in plans or circumstances which affect the timetable of sales tax refunds as set out in the application. If the company fails to comply with this requirement, the Tax Commissioner may defer any pending sales tax refunds until the company does comply.

(7) The incentives contained in section 77-5725 shall be in lieu of the tax credits allowed by the Nebraska Advantage Rural Development Act for any project. In computing credits under the act, any investment or employment which is eligible for benefits or used in determining benefits under the Nebraska Advantage Act shall be subtracted from the increases computed for determining the credits under section 77-27,188. New investment or employment at a project location that results in the meeting or maintenance of the employment or investment requirements, the creation of credits, or refunds of taxes under the Employment and Investment Growth Act shall not be considered new investment or employment for purposes of the Nebraska Advantage Act. The use of carryover credits under the Employment and Investment Growth Act, the Invest Nebraska Act, the Nebraska Advantage Rural Development Act, or the Quality Jobs Act shall not preclude investment and employment from being considered new investment or employment under the Nebraska Advantage Act. The use of property tax exemptions at the project under the Employment and Investment Growth Act shall not preclude investment not eligible for the property tax exemption from being considered new investment under the Nebraska Advantage Act.

(8) A taxpayer and the Tax Commissioner may enter into agreements for more than one project and may include more than one project in a single agreement. The projects may be either sequential or concurrent. A project may involve the same location as another project. No new employment or new investment shall be included in more than one project for either the meeting of the employment or investment requirements or the creation of credits. When projects overlap and the plans do not clearly specify, then the taxpayer shall specify in which project the employment or investment belongs.

(9) The taxpayer may request that an agreement be modified if the modification is consistent with the purposes of the act and does not require a change in the description of the project. An agreement may not be modified to a tier that would grant a higher level of benefits to the taxpayer or to a tier 1 project. Once satisfied that the modification to the agreement is consistent with the purposes stated in the act, the Tax Commissioner and taxpayer may amend the agreement. For a tier 6 project, the taxpayer must agree to limit the project to qualified activities allowable under tier 2 and tier 4.

Source: Laws 2005, LB 312, § 45; Laws 2006, LB 1003, § 13; Laws 2008, LB895, § 15; Laws 2008, LB914, § 22; Laws 2009, LB164, § 5; Laws 2012, LB1118, § 6; Laws 2013, LB34, § 6.

Cross References

Employment and Investment Growth Act, see section 77-4101.

Invest Nebraska Act, see section 77-5501.

Nebraska Advantage Rural Development Act, see section 77-27,187.

Quality Jobs Act, see section 77-4901.

77-5725 Tiers; requirements; incentives; enumerated.

(1) Applicants may qualify for benefits under the Nebraska Advantage Act in one of six 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 after December 31, 2017. All complete project applications filed on or before December 31, 2017, 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 on or before December 31, 2017. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(b) Tier 2, (i) investment in qualified property of at least three million dollars and the hiring of at least thirty new employees or (ii) for a large data center project, investment in qualified property for the data center of at least two hundred million dollars and the hiring for the data center 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 after December 31, 2017. All complete project applications filed on or before December 31, 2017, 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 on or before December 31, 2017. 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;

(e) Tier 5, (i) investment in qualified property of at least thirty million dollars or (ii) for the production of electricity by using one or more sources of renewable energy to produce electricity for sale as described in subdivision (1)(j) of section 77-5715, investment in qualified property of at least twenty 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; and

(f) Tier 6, investment in qualified property of at least ten million dollars and the hiring of at least seventy-five new employees or the investment in qualified property of at least one hundred million dollars and the hiring of at least fifty new employees. Agreements may be executed with regard to completed project applications filed before January 1, 2018. All project agreements pending, approved, or entered into before such date shall continue in full force and effect.

(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, tier 5, or tier 6 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, tier 5, or tier 6 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 a contractor or repairperson after appointment as a purchasing agent of the owner of the improvement to real estate when such property is incorporated into real estate as a part of a project. 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;

(iv) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the taxpayer when such property is annexed to, but not incorporated into, real estate as a part of a project. The refund shall be based on the cost of materials subject to the sales and use tax that were annexed to real estate; and

(v) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the taxpayer when such property is both (A) incorporated into real estate as a part of a project and (B) annexed to, but not incorporated into, real estate as a part of a project. 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, tier 5, or tier 6 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, excluding any compensation in excess of one million dollars paid to any one employee during the year, 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, excluding any compensation in excess of one million dollars paid to any one employee during the year; and

(c) Nebraska average annual wage means the Nebraska average weekly wage times fifty-two.

(4) Any taxpayer who qualifies for a tier 6 project shall be entitled to a credit equal to ten percent times the total compensation paid to all employees, other than base-year employees, excluding any compensation in excess of one million dollars paid to any one employee during the year, employed at the project.

(5) 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. Any taxpayer who has met the required levels of investment and employment for a tier 6 project shall receive a credit equal to fifteen percent of the investment made in qualified property at the project.

(6) The credits prescribed in subsections (3), (4), and (5) 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.

(7) The credit prescribed in subsection (5) 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.

(8)(a) Property described in subdivisions (8)(c)(i) through (v) of this section used in connection with a 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 property and are eligible for exemption under the conditions and for the time periods provided in subdivision (8)(b) of this section.

(b)(i) A taxpayer who has met the required levels of employment and investment for a tier 4 project shall receive the exemption of property in subdivisions (8)(c)(ii), (iii), and (iv) of this section. A taxpayer who has met the required levels of employment and investment for a tier 6 project shall receive the exemption of property in subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section. Such property shall be eligible for the exemption from the first January 1 following the end of the year during which the required levels were exceeded through the ninth December 31 after the first year property included in subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section qualifies for the exemption.

(ii) A taxpayer who has filed an application that describes a tier 2 large data center project or a project under tier 4 or tier 6 shall receive the exemption of property in subdivision (8)(c)(i) of this section beginning with the first January 1 following the acquisition of the property. The exemption shall continue through the end of the period property included in subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section qualifies for the exemption.

(iii) A taxpayer who has filed an application that describes a tier 2 large data center project or a tier 5 project that is sequential to a tier 2 large data center project for which the entitlement period has expired shall receive the exemption of all property in subdivision (8)(c) of this section beginning any January 1 after the acquisition of the property. Such property shall be eligible for exemption from the tax on personal property from the January 1 preceding the first claim for exemption approved under this subdivision through the ninth December 31 after the year the first claim for exemption is approved.

(iv) A taxpayer who has a project for an Internet web portal or a data center and who has met the required levels of employment and investment for a tier 2 project or the required level of investment for a tier 5 project, taking into account only the employment and investment at the web portal or data center project, shall receive the exemption of property in subdivision (8)(c)(ii) of this section. Such property shall be eligible for the exemption from the first January 1 following the end of the year during which the required levels were exceeded through the ninth December 31 after the first year any property included in subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section qualifies for the exemption.

(v) 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.

(c) 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 turboprop 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 environ-

mental 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;

(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; and

(v) For a tier 2 large data center project or tier 6 project, any other personal property located at the project.

(d) In order to receive the property tax exemptions allowed by subdivision (8)(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 whether a taxpayer is eligible to obtain exemption for personal property based on the criteria for exemption and the eligibility of each item listed for exemption and, on or before August 1, certify such to the taxpayer and to the affected county assessor.

(9)(a) The investment thresholds in this section for a particular year of application shall be adjusted by the method provided in this subsection, except that the investment threshold for a tier 5 project described in subdivision (1)(e)(ii) of this section shall not be adjusted.

(b) For tier 1, tier 2, tier 4, and tier 5 projects other than tier 5 projects described in subdivision (1)(e)(ii) of this section, beginning October 1, 2006, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods 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.

(c) For tier 6, beginning October 1, 2008, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods shall be divided by the Producer Price Index for the first quarter of 2008 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2008.

(d) For a tier 2 large data center project, beginning October 1, 2012, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods shall be divided by the

Producer Price Index for the first quarter of 2012 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2012.

(e) If the resulting amount is not a multiple of one million dollars, the amount shall be rounded to the next lowest one million dollars.

(f) 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; Laws 2008, LB895, § 16; Laws 2008, LB965, § 22; Laws 2009, LB164, § 6; Laws 2010, LB879, § 18; Laws 2010, LB918, § 4; Laws 2012, LB1118, § 7; Laws 2013, LB104, § 4; Laws 2014, LB1067, § 2.
Operative date April 10, 2014.

Cross References

Local Option Revenue Act, see section 77-27,148.

Nebraska Revenue Act of 1967, see section 77-2701.

77-5726 Credits; use; refund claims; procedures; interest; appointment of purchasing agent; protest; appeal.

(1)(a) The credits prescribed in section 77-5725 for a year shall be established by filing the forms required by the Tax Commissioner with the income tax return for the taxable year which includes the end of the year the credits were earned. The credits may be used and shall be applied in the order in which they were first allowed. The credits may be used after any other nonrefundable credits to reduce the taxpayer's income tax liability imposed by sections 77-2714 to 77-27,135. Credits may be used beginning with the taxable year which includes December 31 of the year the required minimum levels were reached. The last year for which credits may be used is the taxable year which includes December 31 of the last year of the carryover period. Any decision on how part of the credit is applied shall not limit how the remaining credit could be applied under this section.

(b) The taxpayer may use the credit provided in subsection (3) of section 77-5725 to reduce the taxpayer's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757 to the extent such liability is attributable to the number of new employees at the project, excluding any compensation in excess of one million dollars paid to any one employee during the year. The taxpayer may use the credit provided in subsection (4) of section 77-5725 to reduce the taxpayer's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757 to the extent such liability is attributable to all employees employed at the project, other than base-year employees and excluding any compensation in excess of one million dollars paid to any one employee during the year. To the extent of the credit used, such withholding shall not constitute public funds or state tax revenue and shall not constitute a trust fund or be owned by the state. The use by the taxpayer of the credit shall not change the amount that otherwise would be reported by the taxpayer to the employee under section 77-2754 as income tax withheld and shall not reduce the amount that otherwise would be allowed by the state as a

refundable credit on an employee's income tax return as income tax withheld under section 77-2755.

For a tier 1, tier 2, tier 3, or tier 4 project, the amount of credits used against income tax withholding shall not exceed the withholding attributable to new employees employed at the project, excluding any compensation in excess of one million dollars paid to any one employee during the year.

For a tier 6 project, the amount of credits used against income tax withholding shall not exceed the withholding attributable to all employees employed at the project, other than base-year employees and excluding any compensation in excess of one million dollars paid to any one employee during the year.

If the amount of credit used by the taxpayer against income tax withholding exceeds this amount, the excess withholding shall be returned to the Department of Revenue in the manner provided in section 77-2756, such excess amount returned shall be considered unused, and the amount of unused credits may be used as otherwise permitted in this section or shall carry over to the extent authorized in subdivision (1)(e) of this section.

(c) Credits may be used to obtain a refund of sales and use taxes under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 which are not otherwise refundable that are paid on purchases, including rentals, for use at the project for a tier 1, tier 2, tier 3, or tier 4 project or for use within this state for a tier 2 large data center project or a tier 6 project.

(d) The credits earned for a tier 6 project may be used to obtain a payment from the state equal to the real property taxes due after the year the required levels of employment and investment were met and before the end of the carryover period, for real property that is included in such project and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed. Once the required levels of employment and investment for a tier 2 large data center project have been met, the credits earned for a tier 2 large data center project may be used to obtain a payment from the state equal to the real property taxes due after the year of application and before the end of the carryover period, for real property that is included in such project and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed. The payment from the state shall be made only after payment of the real property taxes have been made to the county as required by law. Payments shall not be allowed for any taxes paid on real property for which the taxes are divided under section 18-2147 or 58-507.

(e) Credits may be carried over until fully utilized, except that such credits may not be carried over more than nine years after the year of application for a tier 1 or tier 3 project, fourteen years after the year of application for a tier 2 or tier 4 project, or more than one year past the end of the entitlement period for a tier 6 project.

(2)(a) No refund claims shall be filed until after the required levels of employment and investment have been met.

(b) Refund claims shall be filed no more than once each quarter for refunds under the Nebraska Advantage Act, except that any claim for a refund in excess of twenty-five thousand dollars may be filed at any time.

(c) Refund claims for materials purchased by a purchasing agent shall include:

(i) A copy of the purchasing agent appointment;

(ii) The contract price; and

(iii)(A) For refunds under subdivision (2)(a)(iii) or (2)(a)(v) of section 77-5725, a certification by the contractor or repairperson of the percentage of the materials incorporated into or annexed to the project on which sales and use taxes were paid to Nebraska after appointment as purchasing agent; or

(B) For refunds under subdivision (2)(a)(iv) of section 77-5725, a certification by the contractor or repairperson of the percentage of the contract price that represents the cost of materials annexed to the project and the percentage of the materials annexed to the project on which sales and use taxes were paid to Nebraska after appointment as purchasing agent.

(d) All refund claims shall be filed, processed, and allowed as any other claim under section 77-2708, except that the amounts allowed to be refunded under the Nebraska Advantage Act shall be deemed to be overpayments and shall be refunded notwithstanding any limitation in subdivision (2)(a) of section 77-2708. The refund may be allowed if the claim is filed within three years from the end of the year the required levels of employment and investment are met or within the period set forth in section 77-2708.

(e) If a claim for a refund of sales and use taxes under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 of more than twenty-five thousand dollars is filed by June 15 of a given year, the refund shall be made on or after November 15 of the same year. If such a claim is filed on or after June 16 of a given year, the refund shall not be made until on or after November 15 of the following year. The Tax Commissioner shall notify the affected city, village, county, or municipal county of the amount of refund claims of sales and use taxes under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 that are in excess of twenty-five thousand dollars on or before July 1 of the year before the claims will be paid under this section.

(f) Interest shall not be allowed on any taxes refunded under the Nebraska Advantage Act.

(3) The appointment of purchasing agents shall be recognized for the purpose of changing the status of a contractor or repairperson as the ultimate consumer of tangible personal property purchased after the date of the appointment which is physically incorporated into or annexed to the project and becomes the property of the owner of the improvement to real estate or the taxpayer. The purchasing agent shall be jointly liable for the payment of the sales and use tax on the purchases with the owner of the property.

(4) A determination that a taxpayer is not engaged in a qualified business or has failed to meet or maintain the required levels of employment or investment for incentives, exemptions, or recapture may be protested within sixty days after the mailing of the written notice of the proposed determination. If the notice of proposed determination is not protested within the sixty-day period, the proposed determination is a final determination. If the notice is protested, the Tax Commissioner shall issue a written order resolving such protests. The written order of the Tax Commissioner resolving a protest may be appealed to the district court of Lancaster County within thirty days after the issuance of the order.

Source: Laws 2005, LB 312, § 48; Laws 2008, LB895, § 17; Laws 2008, LB914, § 23; Laws 2009, LB164, § 7; Laws 2010, LB879, § 19; Laws 2012, LB1118, § 8; Laws 2013, LB34, § 7.

Cross References

Local Option Revenue Act, see section 77-27,148.

Nebraska Revenue Act of 1967, see section 77-2701.

77-5727 Recapture or disallowance of incentives.

(1)(a) If the taxpayer fails either to meet the required levels of employment or investment for the applicable project by the end of the fourth year after the end of the year the application was submitted for a tier 1, tier 3, or tier 6 project or by the end of the sixth year after the end of the year the application was submitted for a tier 2, tier 4, or tier 5 project or to utilize such project in a qualified business at employment and investment levels at or above those required in the agreement for the entire entitlement period, all or a portion of the incentives set forth in the Nebraska Advantage Act shall be recaptured or disallowed.

(b) In the case of a taxpayer who has failed to meet the required levels of investment or employment within the required time period, all reduction in the personal property tax because of the act shall be recaptured.

(2) In the case of a taxpayer who has failed to maintain the project at the required levels of employment or investment for the entire entitlement period, any reduction in the personal property tax, any refunds in tax allowed under subsection (2) of section 77-5725, and any refunds or reduction in tax allowed because of the use of a credit allowed under section 77-5725 shall be partially recaptured from either the taxpayer or the owner of the improvement to real estate and any carryovers of credits shall be partially disallowed. The amount of the recapture shall be a percentage equal to the number of years the taxpayer did not maintain the project at or above the required levels of investment and employment divided by the number of years of the project's entitlement period multiplied by the refunds allowed, reduction in personal property tax, the credits used, and the remaining carryovers. In addition, the last remaining year of personal property tax exemption shall be disallowed for each year the taxpayer did not maintain such project at or above the required levels of employment or investment.

(3) In the case of a taxpayer qualified under tier 5 who has failed to maintain the average number of equivalent employees at the project at the end of the six years following the year the taxpayer attained the required amount of investment, any refunds in tax allowed under subsection (2) of section 77-5725 or any reduction in the personal property tax under section 77-5725 shall be partially recaptured from the taxpayer. The amount of recapture shall be the total amount of refunds and reductions in tax allowed for all years times the reduction in the average number of equivalent employees employed at the end of the entitlement period from the number of equivalent employees employed in the base year divided by the number of equivalent employees employed in the base year. For purposes of this subsection, the average number of equivalent employees shall be calculated at the end of the entitlement period by adding the number of equivalent employees in the year the taxpayer attains the required level of investment and each of the next following six years and dividing the result by seven.

(4) If the taxpayer receives any refunds or reduction in tax to which the taxpayer was not entitled or which were in excess of the amount to which the taxpayer was entitled, the refund or reduction in tax shall be recaptured separate from any other recapture otherwise required by this section. Any

amount recaptured under this subsection shall be excluded from the amounts subject to recapture under other subsections of this section.

(5) Any refunds or reduction in tax due, to the extent required to be recaptured, shall be deemed to be an underpayment of the tax and shall be immediately due and payable. When tax benefits were received in more than one year, the tax benefits received in the most recent year shall be recovered first and then the benefits received in earlier years up to the extent of the required recapture.

(6)(a) Except as provided in subdivision (6)(b) of this section, any personal property tax that would have been due except for the exemption allowed under the Nebraska Advantage Act, to the extent it becomes due under this section, shall be considered delinquent and shall be immediately due and payable to the county or counties in which the property was located when exempted.

(b) For a tier 2 large data center project, any personal property tax that would have been due except for the exemption under the Nebraska Advantage Act, together with interest at the rate provided in section 45-104.01 from the original delinquency date of the tax that would have been due until the date paid, to the extent it becomes due under this section, shall be considered delinquent and shall be immediately payable to the county or counties in which the property was located when exempted.

(c) All amounts received by a county under this section shall be allocated to each taxing unit levying taxes on tangible personal property in the county in the same proportion that the levy on tangible personal property of such taxing unit bears to the total levy of all of such taxing units.

(7) Notwithstanding any other limitations contained in the laws of this state, collection of any taxes deemed to be underpayments by this section shall be allowed for a period of three years after the end of the entitlement period.

(8) Any amounts due under this section shall be recaptured notwithstanding other allowable credits and shall not be subsequently refunded under any provision of the Nebraska Advantage Act unless the recapture was in error.

(9) The recapture required by this section shall not occur if the failure to maintain the required levels of employment or investment was caused by an act of God or national emergency.

Source: Laws 2005, LB 312, § 49; Laws 2006, LB 1003, § 15; Laws 2008, LB895, § 18; Laws 2009, LB164, § 8; Laws 2012, LB1118, § 9.

77-5728 Incentives; transfer; when; effect; disclosure of information.

(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.

(5) The Department of Revenue may disclose information to the acquiring taxpayer about the project and prior benefits that is reasonably necessary to determine the future incentives and liabilities of the project.

Source: Laws 2005, LB 312, § 50; Laws 2006, LB 1003, § 16; Laws 2007, LB368, § 140; Laws 2013, LB34, § 8.

77-5731 Reports; joint hearing.

(1) The Tax Commissioner shall submit electronically an annual report to the Legislature no later than July 15 of each year. The Department of Revenue shall, on or before September 1 of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

(2) The report shall list (a) the agreements which have been signed during the previous year, (b) the agreements which are still in effect, (c) the identity of each taxpayer who is party to an agreement, and (d) the location of each project.

(3) The report shall also state, for taxpayers who are parties to agreements, by industry group (a) the specific incentive options applied for under the Nebraska Advantage 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 credits used against withholding liability, (g) the number of jobs created under the act, (h) the expansion of capital investment, (i) the estimated wage levels of jobs created under the act 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, (m) the credits outstanding under the act, (n) the value of personal property

exempted by class in each county under the act, (o) the value of property for which payments equal to property taxes paid were allowed in each county, and (p) the total amount of the payments.

(4) In estimating the projected future state revenue gains and losses, the report shall detail the methodology utilized, state the economic multipliers and industry multipliers used to determine the amount of economic growth and positive tax revenue, describe the analysis used to determine the percentage of new jobs attributable to the Nebraska Advantage Act assumption, and identify limitations that are inherent in the analysis method.

(5) The report shall provide an explanation of the audit and review processes of the department in approving and rejecting applications or the grant of incentives and in enforcing incentive recapture. The report shall also specify the median period of time between the date of application and the date the agreement is executed for all agreements executed by December 31 of the prior year.

(6) The report shall provide information on project-specific total incentives used every two years for each approved project. The report shall disclose (a) the identity of the taxpayer, (b) the location of the project, and (c) the total credits used and refunds approved during the immediately preceding two years expressed as a single, aggregated total. The incentive information required to be reported under this subsection shall not be reported for the first year the taxpayer attains the required employment and investment thresholds. The information on first-year incentives used shall be combined with and reported as part of the second year. Thereafter, the information on incentives used for succeeding years shall be reported for each project every two years containing information on two years of credits used and refunds approved. The incentives used shall include incentives which have been approved by the department, but not necessarily received, during the previous two years.

(7) The report shall include an executive summary which shows aggregate information for all projects for which the information on incentives used in subsection (6) of this section is reported as follows: (a) The total incentives used by all taxpayers for projects detailed in subsection (6) of this section during the previous two years; (b) the number of projects; (c) the new jobs at the project for which credits have been granted; (d) the average compensation paid employees in the state in the year of application and for the new jobs at the project; and (e) the total investment for which incentives were granted. The executive summary shall summarize the number of states which grant investment tax credits, job tax credits, sales and use tax refunds for qualified investment, and personal property tax exemptions and the investment and employment requirements under which they may be granted.

(8) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2005, LB 312, § 53; Laws 2008, LB895, § 19; Laws 2012, LB782, § 146; Laws 2013, LB34, § 9; Laws 2013, LB612, § 7.

77-5734 Department of Revenue; estimate of sales and use tax refunds; duties.

The Department of Revenue shall, on or before the fifteenth day of October and February of every year and the fifteenth day of April in odd-numbered years, make an estimate of the amount of sales and use tax refunds to be paid

under the Nebraska Advantage Act during the fiscal years to be forecast under section 77-27,158. The estimate shall be based on the most recent data available, including pending and approved applications and updates thereof as are required by subdivisions (2)(e) and (6)(e) of section 77-5723. The estimate shall be forwarded to the Legislative Fiscal Analyst and the Nebraska Economic Forecasting Advisory Board and made a part of the advisory forecast required by section 77-27,158.

Source: Laws 2005, LB 312, § 56; Laws 2013, LB34, § 10.

77-5735 Changes to sections; when effective; applicability.

(1) The changes made in sections 77-5703, 77-5708, 77-5712, 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731 by Laws 2008, LB895, and sections 77-5707.01, 77-5719.01, and 77-5719.02 apply to all applications filed on and after April 18, 2008. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

(2) The changes made in sections 77-5725 and 77-5726 by Laws 2010, LB879, apply to all applications filed on or after July 15, 2010. For all applications filed prior to such date, the taxpayer may make a one-time election, within the time period prescribed by the Tax Commissioner, to have the changes made in sections 77-5725 and 77-5726 by Laws 2010, LB879, apply to such taxpayer's application, or in the absence of such an election, the provisions of the Nebraska Advantage Act as they existed immediately prior to July 15, 2010, apply to such application.

(3) The changes made in sections 77-5707, 77-5715, 77-5719, and 77-5725 by Laws 2010, LB918, apply to all applications filed on or after July 15, 2010. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

(4) The changes made in sections 77-5701, 77-5703, 77-5705, 77-5715, 77-5723, 77-5725, 77-5726, and 77-5727 by Laws 2012, LB1118, apply to all applications filed on or after March 8, 2012. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

(5) The changes made in sections 77-5707.01, 77-5709, 77-5712, 77-5719, 77-5720, 77-5723, and 77-5726 by Laws 2013, LB34, apply to all applications filed on or after September 6, 2013. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

Source: Laws 2008, LB895, § 20; Laws 2010, LB879, § 20; Laws 2010, LB918, § 5; Laws 2012, LB1118, § 10; Laws 2013, LB34, § 11; Laws 2014, LB851, § 15.

Operative date April 10, 2014.

ARTICLE 58

NEBRASKA ADVANTAGE RESEARCH AND DEVELOPMENT ACT

Section	
77-5801.	Act, how cited.
77-5801.01.	Legislative findings.
77-5803.	Research tax credit; amount.
77-5806.	Applicability of act.

Section

77-5807. Report; joint hearing.

77-5801 Act, how cited.

Sections 77-5801 to 77-5808 shall be known and may be cited as the Nebraska Advantage Research and Development Act.

Source: Laws 2005, LB 312, § 59; Laws 2009, LB403, § 12; Laws 2014, LB836, § 4.

Effective date July 18, 2014.

77-5801.01 Legislative findings.

The Legislature hereby finds and declares that it is the policy of this state to make revisions in Nebraska's tax structure in order to increase research and development in Nebraska.

Source: Laws 2014, LB836, § 5.

Effective date July 18, 2014.

77-5803 Research tax credit; amount.

(1)(a) Except as provided in subdivision (1)(b) of this section, 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 under this subdivision shall equal fifteen percent of the federal credit allowed under section 41 of the Internal Revenue Code of 1986, as amended, or as apportioned to this state under subsection (2) of this section. The credit shall be allowed for the first tax year it is claimed and for the twenty tax years immediately following.

(b) 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, on the campus of a college or university in this state or at a facility owned by a college or university in this state shall be allowed a research tax credit as provided in the Nebraska Advantage Research and Development Act. The credit amount under this subdivision shall equal thirty-five percent of the federal credit allowed under section 41 of the Internal Revenue Code of 1986, as amended, or as apportioned to this state under subsection (2) of this section. The credit shall be allowed for the first tax year it is claimed and for the twenty tax years immediately following.

(2) For any business firm doing business both within and without this state, the amount of the federal credit may be determined either by dividing the amount expended in research and experimental activities in this state in any tax year by the total amount expended in research and experimental activities 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; Laws 2008, LB915, § 7; Laws 2009, LB555, § 1; Laws 2012, LB983, § 1.

77-5806 Applicability of act.

The Nebraska Advantage Research and Development Act shall be operative for all tax years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended. No business firm shall be allowed to first claim the credit for any tax year beginning or deemed to begin after December 31, 2017, under the Internal Revenue Code of 1986, as amended.

Source: Laws 2005, LB 312, § 64; Laws 2009, LB164, § 10; Laws 2014, LB1067, § 3.
Operative date April 10, 2014.

77-5807 Report; joint hearing.

Beginning July 15, 2007, and each July 15 thereafter the Tax Commissioner shall prepare a report stating the total amount of credits claimed on income tax returns or as refunds of sales and use tax during the previous calendar year. The Department of Revenue shall, on or before September 1 of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request. No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2005, LB 312, § 65; Laws 2013, LB612, § 8.

ARTICLE 59

NEBRASKA ADVANTAGE MICROENTERPRISE TAX CREDIT ACT

Section

77-5905. Applications; approval; limit.

77-5907. Report; joint hearing.

77-5905 Applications; approval; limit.

(1) If the Department of Revenue determines that an application meets the requirements of section 77-5904 and that the investment or employment is eligible for the credit and (a) the applicant is actively engaged in the operation of the microbusiness or will be actively engaged in the operation upon its establishment, (b) the majority of the assets of the microbusiness are located in a distressed area or will be upon its establishment, (c) the applicant will make new investment or employment in the microbusiness, and (d) the new investment or employment will create new income or jobs in the distressed area, the department shall approve the application and authorize tentative tax credits to the applicant within the limits set forth in this section and certify the amount of tentative tax credits approved for the applicant. Applications for tax credits shall be considered in the order in which they are received.

(2) The department may approve applications up to the adjusted limit for each calendar year beginning January 1, 2006, through December 31, 2017. After applications totaling the adjusted limit have been approved for a calendar year, no further applications shall be approved for that year. The adjusted limit in a given year is two million dollars plus tentative tax credits that were not granted by the end of the preceding year. Tax credits shall not be allowed for a taxpayer receiving benefits under the Employment and Investment Growth Act,

the Nebraska Advantage Act, or the Nebraska Advantage Rural Development Act.

Source: Laws 2005, LB 312, § 70; Laws 2009, LB164, § 11; Laws 2014, LB1067, § 4.

Operative date April 10, 2014.

Cross References

Employment and Investment Growth Act, see section 77-4101.

Nebraska Advantage Act, see section 77-5701.

Nebraska Advantage Rural Development Act, see section 77-27,187.

77-5907 Report; joint hearing.

The Tax Commissioner shall prepare a report identifying the following aggregate amounts for the previous calendar year: (1) The amount of projected employment and investment anticipated by taxpayers receiving tentative tax credits and the tentative tax credits granted; (2) the actual amount of employment and investment made by taxpayers that were granted tentative tax credits in the previous calendar year; (3) the tax credits used; and (4) the tentative tax credits that expired. The report shall be issued on or before July 15, 2007, and each July 15 thereafter. The Department of Revenue shall, on or before September 1 of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request. No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2005, LB 312, § 72; Laws 2013, LB612, § 9.

ARTICLE 62

NAMEPLATE CAPACITY TAX

Section

77-6201. Legislative findings and declarations.

77-6202. Terms, defined.

77-6203. Nameplate capacity tax; annual payment; exemptions; Department of Revenue; duties; owner; file report; interest; penalties.

77-6204. County treasurer; distribute revenue; calculation.

77-6201 Legislative findings and declarations.

The Legislature finds and declares:

(1) The purpose of the nameplate capacity tax levied under section 77-6203 is to replace property taxes currently imposed on wind infrastructure and depreciated over a short period of time in a way that causes local budgeting challenges and increases upfront costs for wind developers;

(2) The nameplate capacity tax should be competitive with taxes imposed directly and indirectly on wind generation and development in other states;

(3) The nameplate capacity tax should be fair and nondiscriminatory when compared with other taxes imposed on other industries in the state; and

(4) The nameplate capacity tax should not be singled out as a source of General Fund revenue during times of economic hardship.

Source: Laws 2010, LB1048, § 12.

77-6202 Terms, defined.

For purposes of sections 77-6201 to 77-6204:

(1) Commissioned means the wind turbine of a wind generation facility has been in commercial operation for at least twenty-four hours. A wind turbine is not in commercial operation unless the wind energy generation facility is connected to the electrical grid;

(2) Nameplate capacity means the capacity of a wind turbine to generate electricity as measured in megawatts, including fractions of a megawatt; and

(3) Wind energy generation facility means a facility that generates electricity using wind as the fuel source.

Source: Laws 2010, LB1048, § 13.

77-6203 Nameplate capacity tax; annual payment; exemptions; Department of Revenue; duties; owner; file report; interest; penalties.

(1) The owner of a wind energy generation facility annually shall pay a nameplate capacity tax equal to the total nameplate capacity of the commissioned wind turbine of the wind energy generation facility multiplied by a tax rate of three thousand five hundred eighteen dollars per megawatt.

(2) No tax shall be imposed on a wind energy generation facility:

(a) Owned or operated by the federal government, the State of Nebraska, a public power district, a public power and irrigation district, an individual municipality, a registered group of municipalities, an electric membership association, or a cooperative; or

(b) That is a customer-generator as defined in section 70-2002.

(3) No tax levied pursuant to this section shall be construed to constitute restricted funds as defined in section 13-518 for the first five years after the wind energy generation facility is commissioned.

(4) The presence of one or more wind energy generation facilities or supporting infrastructure shall not be a factor in the assessment, determination of actual value, or classification under section 77-201 of the real property underlying or adjacent to such facilities or infrastructure.

(5)(a) The Department of Revenue shall collect the tax due under this section.

(b) The tax shall be imposed beginning the first calendar year the wind turbine is commissioned. A wind energy generation facility commissioned prior to July 15, 2010, shall be subject to the tax levied pursuant to sections 77-6201 to 77-6204 on and after January 1, 2010. The amount of property tax on depreciable tangible personal property previously paid on a wind energy generation facility commissioned prior to July 15, 2010, which is greater than the amount that would have been paid pursuant to sections 77-6201 to 77-6204 from the date of commissioning until January 1, 2010, shall be credited against any tax due under Chapter 77, and any amount so credited that is unused in any tax year shall be carried over to subsequent tax years until fully utilized.

(c)(i) The tax for the first calendar year shall be prorated based upon the number of days remaining in the calendar year after the wind turbine is commissioned.

(ii) In the first year in which a wind energy generation facility is taxed or in any year in which additional commissioned nameplate capacity is added to a wind energy generation facility, the taxes on the initial or additional nameplate

capacity shall be prorated for the number of days remaining in the calendar year.

(iii) When a wind turbine is decommissioned or made nonoperational by a change in law or decertification from its status as a certified renewable export facility during a tax year, the taxes shall be prorated for the number of days during which the wind turbine was not decommissioned or was operational.

(iv) When the capacity of a wind turbine to produce electricity is reduced but the wind turbine is not decommissioned, the nameplate capacity of the wind turbine is deemed to be unchanged.

(6)(a) On March 1 of each year, the owner of a wind energy generation facility shall file with the Department of Revenue a report on the nameplate capacity of the facility for the previous year from January 1 through December 31. All taxes shall be due on April 1 and shall be delinquent if not paid on a quarterly basis on April 1 and each quarter thereafter. Delinquent quarterly payments shall draw interest at the rate provided for in section 45-104.02, as such rate may from time to time be adjusted.

(b) The owner of a wind energy generation facility is liable for the taxes under this section with respect to the facility, whether or not the owner of the facility is the owner of the land on which the facility is situated.

(7) Failure to file a report required by subsection (6) of this section, filing such report late, failure to pay taxes due, or underpayment of such taxes shall result in a penalty of five percent of the amount due being imposed for each quarter the report is overdue or the payment is delinquent, except that the penalty shall not exceed ten thousand dollars.

(8) The Department of Revenue shall enforce the provisions of this section. The department shall adopt and promulgate rules and regulations necessary for the implementation and enforcement of this section.

(9) The Department of Revenue shall separately identify the proceeds from the tax imposed by this section and shall pay all such proceeds over to the county treasurer of the county where the wind energy generation facility is located within thirty days after receipt of such proceeds.

Source: Laws 2010, LB1048, § 14; Laws 2011, LB360, § 4.

77-6204 County treasurer; distribute revenue; calculation.

(1) The county treasurer shall distribute all revenue received from the Department of Revenue pursuant to section 77-6203 to local taxing entities which, but for such personal property tax exemption, would have received distribution of personal property tax revenue from depreciable personal property used directly in the generation of electricity using wind as the fuel source.

(2) A local taxing entity's status as eligible for distribution under subsection (1) of this section shall not be affected when and if the net book value of personal property used directly in the generation of electricity using wind as the fuel source becomes zero. A local taxing entity's status as eligible for distribution under such subsection shall be affected by the disposal of all of the exempt depreciable personal property used directly in the generation of electricity using wind as the fuel source.

(3) The distribution to each eligible local taxing entity shall be calculated by determining the amount of taxes that the eligible local taxing entity levied during the taxable year and dividing this amount by the total tax levied by all of

the eligible local taxing entities during the year. Each eligible entity's resulting fraction shall then be multiplied by the revenue distributed to the county treasurer by the department to determine the portion of such revenue due each local taxing entity.

(4) The Department of Revenue shall not retain any revenue collected pursuant to sections 77-6201 to 77-6204 for distribution, use, transfer, pledge, or allocation to or from the General Fund.

Source: Laws 2010, LB1048, § 15.

ARTICLE 63

ANGEL INVESTMENT TAX CREDIT ACT

Section

- 77-6301. Act, how cited.
 77-6301.01. Legislative findings.
 77-6302. Terms, defined.
 77-6303. Qualified small business; certification; application; form; director; duties; qualification; eligibility for tax credits.
 77-6304. Pass-through entity; certification as qualified fund; application; form; director; duties; qualification; eligibility for tax credits.
 77-6305. Individual, trust, or pass-through entity; certification; application; form; director; duties; qualification; eligibility for tax credits.
 77-6306. Tax credit; amount; director; allocation; limitation; reallocation; when; notice to director; tax credit certificates issued; holding period.
 77-6307. Annual report; contents; failure to file; effect; final report; when required.
 77-6308. Tax credit recaptured; when; director; powers and duties.
 77-6309. Department of Economic Development; report; contents; confidentiality of certain information.
 77-6310. Rules and regulations.

77-6301 Act, how cited.

Sections 77-6301 to 77-6310 shall be known and may be cited as the Angel Investment Tax Credit Act.

Source: Laws 2011, LB389, § 1; Laws 2014, LB836, § 6.
 Effective date July 18, 2014.

77-6301.01 Legislative findings.

The Legislature hereby finds and declares that it is the policy of this state to make revisions in Nebraska's tax structure in order to encourage entrepreneurship and to increase investment in high technology industries in underserved areas of Nebraska.

Source: Laws 2014, LB836, § 7.
 Effective date July 18, 2014.

77-6302 Terms, defined.

For purposes of the Angel Investment Tax Credit Act:

- (1) Director means the Director of Economic Development;
- (2) Distressed area means a municipality, a county with a population of fewer than one hundred thousand inhabitants according to the most recent federal decennial census, an unincorporated area within a county, or a census tract in Nebraska that (a) has an unemployment rate which exceeds the statewide average unemployment rate, (b) has 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) Family member means a family member within the meaning of section 267(c)(4) of the Internal Revenue Code of 1986, as amended;

(4) Investment date means the latest of the following:

(a) The date of a fully executed investor subscription agreement or underlying transaction document pertaining to the applicable qualified investment;

(b) The date on a check made out to a qualified small business for the applicable qualified investment or the date a wire transfer is completed for the applicable qualified investment; or

(c) The date the qualified small business deposits a check made out to such qualified small business for the applicable qualified investment or receives a wire transfer for the applicable qualified investment, as documented on the deposit slip or bank statement of the qualified small business;

(5) Pass-through entity means an organization that for the applicable taxable year is a subchapter S corporation, general partnership, limited partnership, limited liability partnership, trust, or limited liability company and that for the applicable taxable year is not taxed as a corporation;

(6) Qualified fund means a fund that has been certified by the director under section 77-6304;

(7) Qualified high-technology field includes, but is not limited to, aerospace, agricultural processing, renewable energy, energy efficiency and conservation, environmental engineering, food technology, cellulosic ethanol, information technology, materials science technology, nanotechnology, telecommunications, biosolutions, medical device products, pharmaceuticals, diagnostics, biologicals, chemistry, veterinary science, and similar fields;

(8) Qualified investment means a cash investment in a qualified small business made in exchange for common stock, a partnership or membership interest, preferred stock, debt with mandatory conversion to equity, or an equivalent ownership interest as determined by the director of a minimum of:

(a) Twenty-five thousand dollars in a calendar year by a qualified investor; or

(b) Fifty thousand dollars in a calendar year by a qualified fund;

(9) Qualified investor means an individual, trust, or pass-through entity which has been certified by the director under section 77-6305; and

(10) Qualified small business means a business that has been certified by the director under section 77-6303.

Source: Laws 2011, LB389, § 2; Laws 2014, LB1067, § 5.
Operative date January 1, 2014.

77-6303 Qualified small business; certification; application; form; director; duties; qualification; eligibility for tax credits.

(1) A business may apply to the director for certification as a qualified small business. The application shall be in the form and be made under the procedures specified by the director.

(2) Within thirty days after receiving an application for certification under this section, the director shall certify the business as satisfying the conditions required of a qualified small business, request additional information, or deny

the application. If the director requests additional information, the director shall certify the business or deny the application within thirty days after receiving the additional information. If the director neither certifies the business nor denies the application within thirty days after receiving the original application or within thirty days after receiving the additional information requested, whichever is later, then the application is deemed approved if the business meets the qualifications in subsection (3) of this section. A business that applies for certification and is denied may reapply.

(3) To be certified, a business shall:

(a) Have its headquarters in Nebraska;

(b) Have at least fifty-one percent of its employees employed in Nebraska and have at least fifty-one percent of its total payroll paid or incurred in Nebraska;

(c) Be engaged in, or committed to engage in, innovation in Nebraska in one or more of the following activities as its primary business activity:

(i) Using proprietary technology to add value to a product, process, or service in a qualified high-technology field; or

(ii) Researching, developing, or producing a proprietary product, process, or service in a qualified high-technology field;

(d) Except for activities listed in subdivision (3)(c) of this section, not be engaged in political consulting, leisure, hospitality, or professional services provided by attorneys, accountants, physicians, or health care consultants; and

(e) Have twenty-five or fewer employees at the time the qualified investment is made.

(4) In order for a qualified investment in a qualified small business to be eligible for tax credits, the business shall have applied for and received certification for the calendar year in which the qualified investment was made prior to the date on which the qualified investment was made.

Source: Laws 2011, LB389, § 3.

77-6304 Pass-through entity; certification as qualified fund; application; form; director; duties; qualification; eligibility for tax credits.

(1) A pass-through entity may apply to the director for certification as a qualified fund for a calendar year. The application shall be in the form and be made under the procedures specified by the director.

(2) Within thirty days after receiving an application for certification under this section, the director shall certify the pass-through entity as satisfying the conditions required of a qualified fund, request additional information, or deny the application. If the director requests additional information, the director shall certify the pass-through entity or deny the application within thirty days after receiving the additional information. If the director neither certifies the pass-through entity nor denies the application within thirty days after receiving the original application or within thirty days after receiving the additional information requested, whichever is later, then the application is deemed approved if the pass-through entity meets the qualifications in subsection (3) of this section. A pass-through entity that applies for certification and is denied may reapply.

(3) To be certified, a pass-through entity shall:

(a) Invest or intend to invest in qualified small businesses; and

(b) Have at least three separate investors who satisfy the conditions in section 77-6305.

(4) A qualified fund may consist of equity investments or notes that pay interest or other fixed amounts, or any combination of both.

(5) In order for a qualified investment in a qualified small business to be eligible for tax credits, a qualified fund that makes the qualified investment shall have applied for and received certification for the calendar year in which the qualified investment was made prior to making the qualified investment.

Source: Laws 2011, LB389, § 4; Laws 2014, LB1067, § 6.

Operative date January 1, 2014.

77-6305 Individual, trust, or pass-through entity; certification; application; form; director; duties; qualification; eligibility for tax credits.

(1) An individual, trust, or pass-through entity may apply to the director for certification as a qualified investor for a calendar year. The application shall be in the form and be made under the procedures specified by the director. The director shall not certify the following types of individuals, trusts, or pass-through entities as qualified investors:

(a) An individual who controls fifty percent or more of the qualified small business receiving the qualified investment;

(b) A venture capital company; or

(c) Any bank, savings and loan association, insurance company, or similar entity whose normal business activities include venture capital investments.

(2) Within thirty days after receiving an application for certification under this section, the director shall certify the individual, trust, or pass-through entity as satisfying the conditions required of a qualified investor, request additional information, or deny the application. If the director requests additional information, the director shall certify the individual, trust, or pass-through entity or deny the application within thirty days after receiving the additional information. If the director neither certifies the individual, trust, or pass-through entity nor denies the application within thirty days after receiving the original application or within thirty days after receiving the additional information requested, whichever is later, then the application is deemed approved if the individual, trust, or pass-through entity meets the qualifications in subsection (1) of this section. An individual, trust, or pass-through entity which applies for certification and is denied may reapply.

(3) In order for a qualified investment in a qualified small business to be eligible for tax credits, a qualified investor who makes the qualified investment shall have applied for and received certification for the calendar year in which the qualified investment was made prior to making the qualified investment.

Source: Laws 2011, LB389, § 5; Laws 2014, LB1067, § 7.

Operative date January 1, 2014.

77-6306 Tax credit; amount; director; allocation; limitation; reallocation; when; notice to director; tax credit certificates issued; holding period.

(1) For taxable years beginning or deemed to begin on or after January 1, 2011, under the Internal Revenue Code of 1986, as amended, a qualified investor or qualified fund is eligible for a refundable tax credit equal to thirty-five percent of its qualified investment in a qualified small business, except that

if the qualified small business is located in a distressed area the qualified investor or qualified fund is eligible for a refundable tax credit equal to forty percent of its qualified investment in the qualified small business. The director shall not allocate more than three million dollars in tax credits to all qualified investors or qualified funds in a calendar year. If the director does not allocate the entire three million dollars of tax credits in a calendar year, the tax credits that are not allocated shall not carry forward to subsequent years. The director shall not allocate any amount for tax credits for calendar years after 2019.

(2) The director shall not allocate more than a total maximum amount in tax credits for a calendar year to a qualified investor for the investor's cumulative qualified investments as an individual qualified investor and as an investor in a qualified fund as provided in this subsection. For married couples filing joint returns the maximum is three hundred fifty thousand dollars, and for all other filers the maximum is three hundred thousand dollars. The director shall not allocate more than a total of one million dollars in tax credits for qualified investments in any one qualified small business.

(3) The director shall not allocate a tax credit to a qualified investor either as an individual qualified investor or as an investor in a qualified fund if the investor receives more than forty-nine percent of the investor's gross annual income from the qualified small business in which the qualified investment is proposed. A family member of an individual disqualified by this subsection is not eligible for a tax credit under this section. For a married couple filing a joint return, the limitations in this subsection apply collectively to the investor and spouse. For purposes of determining the ownership interest of an investor under this subsection, the rules under section 267(c) and (e) of the Internal Revenue Code of 1986, as amended, apply.

(4) Tax credits shall be allocated to qualified investors or qualified funds in the order that the tax credit applications are filed with the director. Once tax credits have been approved and allocated by the director, the qualified investors and qualified funds shall implement the qualified investment specified within ninety days after allocation of the tax credits. Qualified investors and qualified funds shall notify the director no later than thirty days after the expiration of the ninety-day period that the qualified investment has been made. If the qualified investment is not made within ninety days after allocation of the tax credits, or the director has not, within thirty days following expiration of the ninety-day period, received notification that the qualified investment was made, the tax credit allocation is canceled and available for reallocation. A qualified investor or qualified fund that fails to invest as specified in the application within ninety days after allocation of the tax credits shall notify the director of the failure to invest within five business days after the expiration of the ninety-day investment period.

(5) All tax credit applications filed with the director on the same day shall be treated as having been filed contemporaneously. If two or more qualified investors or qualified funds file tax credit applications on the same day and the aggregate amount of tax credit allocation requests exceeds the aggregate limit of tax credits under this section or the lesser amount of tax credits that remain unallocated on that day, then the tax credits shall be allocated among the qualified investors or qualified funds who filed on that day on a pro rata basis with respect to the amounts requested. The pro rata allocation for any one qualified investor or qualified fund shall be the product obtained by multiplying a fraction, the numerator of which is the amount of the tax credit allocation

request filed on behalf of a qualified investor or qualified fund and the denominator of which is the total of all tax credit allocation requests filed on behalf of all applicants on that day, by the amount of tax credits that remain unallocated on that day for the taxable year.

(6) A qualified investor or qualified fund, or a qualified small business acting on behalf of the investor or fund, shall notify the director when an investment for which tax credits were allocated has been made and shall furnish the director with documentation of the investment date. A qualified fund shall also provide the director with a statement indicating the amount invested by each investor in the qualified fund based on each investor's share of the assets of the qualified fund at the time of the qualified investment. After receiving notification that the qualified investment was made, the director shall issue tax credit certificates for the taxable year in which the qualified investment was made to the qualified investor or, for a qualified investment made by a qualified fund, to each qualified investor who is an investor in the fund. The certificate shall state that the tax credit is subject to revocation if the qualified investor or qualified fund does not hold the investment in the qualified small business for at least three years, consisting of the calendar year in which the investment was made and the two following calendar years. The three-year holding period does not apply if:

(a) The qualified investment by the qualified investor or qualified fund becomes worthless before the end of the three-year period;

(b) Eighty percent or more of the assets of the qualified small business are sold before the end of the three-year period;

(c) The qualified small business is sold or merges with another business before the end of the three-year period;

(d) The qualified small business's common stock begins trading on a public exchange before the end of the three-year period; or

(e) In the case of an individual qualified investor, such investor becomes deceased before the end of the three-year period.

(7) The director shall notify the Tax Commissioner that tax credit certificates have been issued, including the amount of tax credits and all other pertinent tax information.

Source: Laws 2011, LB389, § 6; Laws 2014, LB1067, § 8.
Operative date January 1, 2014.

77-6307 Annual report; contents; failure to file; effect; final report; when required.

(1) Beginning July 1, 2012, each qualified small business, qualified investor, and qualified fund shall submit an annual report to the director by July 1 of each year identifying the amount of money that has been invested by or in it in the previous calendar year under the Angel Investment Tax Credit Act.

(2) The report shall certify that the business, investor, and fund satisfies the requirements of the act.

(3) A qualified small business that ceases all operations and becomes insolvent shall file a final report with the director in the form required by the director documenting its insolvency.

(4) To maintain the confidentiality of the qualified investor and qualified small business, the Department of Economic Development shall use a designated number to identify such persons or businesses.

(5) A qualified small business, qualified investor, or qualified fund that fails to file an annual report by July 1 shall, at the discretion of the director, be subject to a fine of two hundred dollars, revocation of its certification, or both.

Source: Laws 2011, LB389, § 7; Laws 2014, LB1067, § 9.
Operative date January 1, 2014.

77-6308 Tax credit recaptured; when; director; powers and duties.

(1) If, at any time within six years after the allocation of tax credits is made, the director determines that a qualified investor or qualified fund did not meet the three-year holding period required in section 77-6306, any tax credit allocated and certified to the investor or fund shall be recaptured. The director shall notify the Tax Commissioner of such determination, and the Tax Commissioner shall recapture the tax credits.

(2) The director shall, to the extent possible, assure that the allocation of such tax credits provides equitable access to the benefits provided by the Angel Investment Tax Credit Act by all geographic areas of the state.

(3) The director may engage in contractual relationships with a statewide public or private nonprofit organization which shall serve as the agent for the Department of Economic Development in order to effect the purposes and fulfill the requirements of the act.

Source: Laws 2011, LB389, § 8.

77-6309 Department of Economic Development; report; contents; confidentiality of certain information.

(1) By November 15 of each odd-numbered year, the Department of Economic Development shall submit a report to the Legislature and the Governor that includes:

- (a) The number and geographic location of qualified investors;
- (b) The number, geographic location, and amount of qualified investment made into each qualified small business;
- (c) A breakdown of the industry sectors in which qualified small businesses are involved;
- (d) The number of actual tax credits issued by project under the Angel Investment Tax Credit Act on an annual basis; and
- (e) The number of jobs created at each qualified small business.

The report submitted to the Legislature shall be submitted electronically.

(2) Information received, developed, created, or otherwise maintained by the Department of Economic Development and the Department of Revenue in administering and enforcing the Angel Investment Tax Credit Act, other than information required to be included in the report to be submitted by the Department of Economic Development pursuant to this section, may be deemed confidential by the respective departments and not subject to public disclosure.

Source: Laws 2011, LB389, § 9; Laws 2012, LB782, § 147; Laws 2014, LB1067, § 10.
Operative date January 1, 2014.

77-6310 Rules and regulations.

The Department of Economic Development and the Department of Revenue may adopt and promulgate rules and regulations to administer and enforce the Angel Investment Tax Credit Act.

Source: Laws 2011, LB389, § 10.

UNIFORM COMMERCIAL CODE

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ARTICLE 1

GENERAL PROVISIONS

Part 1. GENERAL PROVISIONS

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Part 1

GENERAL PROVISIONS

1-101 Short titles.

- (a) Sections 1-101 to 10-103 may be cited as the Uniform Commercial Code.
- (b) This article may be cited as Uniform Commercial Code—General Provisions.

Source: Laws 2005, LB 570, § 6; Laws 2013, LB210, § 1.

1-102 Scope of article.

This article applies to a transaction to the extent that it is governed by another article of the Uniform Commercial Code.

Source: Laws 2005, LB 570, § 7.

1-103 Construction of Uniform Commercial Code to promote its purposes and policies; applicability of supplemental principles of law.

(a) The Uniform Commercial Code must be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) to simplify, clarify, and modernize the law governing commercial transactions;

(2) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and

(3) to make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

Source: Laws 2005, LB 570, § 8.

1-104 Construction against implied repeal.

The Uniform Commercial Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Source: Laws 2005, LB 570, § 9.

1-105 Severability.

If any provision or clause of the Uniform Commercial Code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of the code are severable.

Source: Laws 2005, LB 570, § 10.

1-106 Use of singular and plural; gender.

In the Uniform Commercial Code, unless the statutory context otherwise requires:

(1) words in the singular number include the plural, and those in the plural include the singular; and

(2) words of any gender also refer to any other gender.

Source: Laws 2005, LB 570, § 11.

1-107 Section captions.

Section captions are part of the Uniform Commercial Code.

Source: Laws 2005, LB 570, § 12.

1-108 Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et seq., except that nothing in this article modifies, limits, or supersedes section 7001(c) of that act or authorizes electronic delivery of any of the notices described in section 7003(b) of that act.

Source: Laws 2005, LB 570, § 13.

1-109 Repealed. Laws 2005, LB 570, § 116.

1-110 Repealed. Laws 2005, LB 570, § 116.

Part 2

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1-201 General definitions.

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of the code that apply to particular articles or parts thereof:

(1) “Action”, in the sense of a judicial proceeding, includes recoupment, counterclaim, setoff, suit in equity, and any other proceeding in which rights are determined.

(2) “Aggrieved party” means a party entitled to pursue a remedy.

(3) “Agreement”, as distinguished from “contract”, means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in section 1-303.

(4) “Bank” means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) “Bearer” means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) “Bill of lading” means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) “Branch” includes a separately incorporated foreign branch of a bank.

(8) “Burden of establishing” a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the

ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under article 2 may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous", with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) "Contract", as distinguished from "agreement", means the total legal obligation that results from the parties' agreement as determined by the Uniform Commercial Code as supplemented by any other applicable laws.

(13) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and a personal representative, an executor, or an administrator of an insolvent debtor's or assignor's estate.

(14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) "Delivery" with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper means voluntary transfer of possession.

(16) "Document of title" means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means

a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(17) “Fault” means a default, breach, or wrongful act or omission.

(18) “Fungible goods” means:

(A) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) goods that by agreement are treated as equivalent.

(19) “Genuine” means free of forgery or counterfeiting.

(20) “Good faith” means honesty in fact in the conduct or transaction concerned.

(21) “Holder” means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) the person in control of a negotiable electronic document of title.

(22) “Insolvency proceeding” includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) “Insolvent” means:

(A) having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) being unable to pay debts as they become due; or

(C) being insolvent within the meaning of federal bankruptcy law.

(24) “Money” means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

(25) “Organization” means a person other than an individual.

(26) “Party”, as distinguished from “third party”, means a person that has engaged in a transaction or made an agreement subject to the Uniform Commercial Code.

(27) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28) “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) “Purchase” means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) “Purchaser” means a person that takes by purchase.

(31) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) “Remedy” means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33) “Representative” means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, a personal representative, an executor, or an administrator of an estate.

(34) “Right” includes remedy.

(35) “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. “Security interest” includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to article 9. “Security interest” does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under section 2-401, but a buyer may also acquire a “security interest” by complying with article 9. Except as otherwise provided in section 2-505, the right of a seller or lessor of goods under article 2 or 2A to retain or acquire possession of the goods is not a “security interest”, but a seller or lessor may also acquire a “security interest” by complying with article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under section 2-401 is limited in effect to a reservation of a “security interest”. Whether a transaction in the form of a lease creates a “security interest” is determined pursuant to section 1-203. “Security interest” does not include a consumer rental purchase agreement as defined in the Consumer Rental Purchase Agreement Act.

(36) “Send” in connection with a writing, record, or notice means:

(A) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(B) in any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(37) “Signed” includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) “Surety” includes a guarantor or other secondary obligor.

(40) “Term” means a portion of an agreement that relates to a particular matter.

(41) “Unauthorized signature” means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) “Warehouse receipt” means a receipt issued by a person engaged in the business of storing goods for hire.

(43) “Writing” includes printing, typewriting, or any other intentional reduction to tangible form. “Written” has a corresponding meaning.

Source: Laws 2005, LB 570, § 14.

Cross References

Consumer Rental Purchase Agreement Act, see section 69-2101.

1-202 Notice; knowledge.

(a) Subject to subsection (f), a person has “notice” of a fact if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) “Knowledge” means actual knowledge. “Knows” has a corresponding meaning.

(c) “Discover”, “learn”, or words of similar import refer to knowledge rather than to reason to know.

(d) A person “notifies” or “gives” a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f), a person “receives” a notice or notification when:

(1) it comes to that person’s attention; or

(2) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual’s attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

Source: Laws 2005, LB 570, § 15.

1-203 Lease distinguished from security interest.

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) the lessee assumes risk of loss of the goods;

(3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) the lessee has an option to renew the lease or to become the owner of the goods;

(5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(1) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(2) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

Source: Laws 2005, LB 570, § 16.

1-204 Value.

Except as otherwise provided in articles 3, 4, and 5, a person gives value for rights if the person acquires them:

(1) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge back is provided for in the event of difficulties in collection;

(2) as security for, or in total or partial satisfaction of, a preexisting claim;

(3) by accepting delivery under a preexisting contract for purchase; or

(4) in return for any consideration sufficient to support a simple contract.

Source: Laws 2005, LB 570, § 17.

1-205 Reasonable time; seasonableness.

(a) Whether a time for taking an action required by the Uniform Commercial Code is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

Source: Laws 2005, LB 570, § 18.

1-206 Presumptions.

Whenever the Uniform Commercial Code creates a “presumption” with respect to a fact, or provides that a fact is “presumed”, the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

Source: Laws 2005, LB 570, § 19.

Part 3

TERRITORIAL APPLICABILITY AND GENERAL RULES

1-301 Territorial applicability; parties’ power to choose applicable law.

(a) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.

(b) In the absence of an agreement effective under subsection (a), and except as provided in subsection (c), the Uniform Commercial Code applies to transactions bearing an appropriate relation to this state.

(c) If one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

(1) Section 2-402;

(2) Sections 2A-105 and 2A-106;

(3) Section 4-102;

(4) Section 4A-507;

(5) Section 5-116;

(6) Section 8-110;

(7) Sections 9-301 through 9-307.

Source: Laws 2005, LB 570, § 20.

1-302 Variation by agreement.

(a) Except as otherwise provided in subsection (b) or elsewhere in the Uniform Commercial Code, the effect of provisions of the code may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by the code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of the code of the phrase “unless otherwise agreed”, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

Source: Laws 2005, LB 570, § 21.

1-303 Course of performance, course of dealing, and usage of trade.

(a) A “course of performance” is a sequence of conduct between the parties to a particular transaction that exists if:

(1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A “course of dealing” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A “usage of trade” is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties’ agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) express terms prevail over course of performance, course of dealing, and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(f) Subject to section 2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

Source: Laws 2005, LB 570, § 22.

1-304 Obligation of good faith.

Every contract or duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement.

Source: Laws 2005, LB 570, § 23.

1-305 Remedies to be liberally administered.

(a) The remedies provided by the Uniform Commercial Code must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in the code or by other rule of law.

(b) Any right or obligation declared by the code is enforceable by action unless the provision declaring it specifies a different and limited effect.

Source: Laws 2005, LB 570, § 24.

1-306 Waiver or renunciation of claim or right after breach.

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

Source: Laws 2005, LB 570, § 25.

1-307 Prima facie evidence by third-party documents.

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

Source: Laws 2005, LB 570, § 26.

1-308 Performance or acceptance under reservation of rights.

(a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest", or the like are sufficient.

(b) Subsection (a) does not apply to an accord and satisfaction.

Source: Laws 2005, LB 570, § 27.

1-309 Option to accelerate at will.

A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure", or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

Source: Laws 2005, LB 570, § 28.

1-310 Subordinated obligations.

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

Source: Laws 2005, LB 570, § 29.

ARTICLE 2

SALES

Part 1. SHORT TITLE, GENERAL CONSTRUCTION, AND SUBJECT MATTER

Section

- 2-103. Definitions and index of definitions.
2-104. Definitions; merchant; between merchants; financing agency.

Part 2. FORM, FORMATION, AND READJUSTMENT OF CONTRACT

- 2-202. Final written expression; parol or extrinsic evidence.
2-208. Repealed. Laws 2005, LB 570, § 116.

Part 3. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

- 2-310. Open time for payment or running of credit; authority to ship under reservation.
2-323. Form of bill of lading required in overseas shipment; overseas.

Part 4. TITLE, CREDITORS, AND GOOD FAITH PURCHASERS

- 2-401. Passing of title; reservation for security; limited application of this section.

Part 5. PERFORMANCE

- 2-503. Manner of seller's tender of delivery.
2-505. Seller's shipment under reservation.
2-506. Rights of financing agency.
2-509. Risk of loss in the absence of breach.

Part 6. BREACH, REPUDIATION, AND EXCUSE

- 2-605. Waiver of buyer's objections by failure to particularize.

Part 7. REMEDIES

- 2-705. Seller's stoppage of delivery in transit or otherwise.

Part 1

SHORT TITLE, GENERAL CONSTRUCTION, AND SUBJECT MATTER

2-103 Definitions and index of definitions.

(1) In this article unless the context otherwise requires

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) “Good faith” in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) “Receipt” of goods means taking physical possession of them.

(d) “Seller” means a person who sells or contracts to sell goods.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

“Acceptance”.	Section 2-606.
“Banker’s credit”.	Section 2-325.
“Between merchants”.	Section 2-104.
“Cancellation”.	Section 2-106(4).
“Commercial unit”.	Section 2-105.
“Confirmed credit”.	Section 2-325.
“Conforming to contract”.	Section 2-106.
“Contract for sale”.	Section 2-106.
“Cover”.	Section 2-712.
“Entrusting”.	Section 2-403.
“Financing agency”.	Section 2-104.
“Future goods”.	Section 2-105.
“Goods”.	Section 2-105.
“Identification”.	Section 2-501.
“Installment contract”.	Section 2-612.
“Letter of credit”.	Section 2-325.
“Lot”.	Section 2-105.
“Merchant”.	Section 2-104.
“Overseas”.	Section 2-323.
“Person in position of seller”.	Section 2-707.
“Present sale”.	Section 2-106.
“Sale”.	Section 2-106.
“Sale on approval”.	Section 2-326.
“Sale or return”.	Section 2-326.
“Termination”.	Section 2-106.

(3) “Control” as provided in section 7-106 and the following definitions in other articles apply to this article:

“Check”.	Section 3-104.
“Consignee”.	Section 7-102.
“Consignor”.	Section 7-102.
“Consumer goods”.	Section 9-102.
“Dishonor”.	Section 3-502.
“Draft”.	Section 3-104.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Source: Laws 1963, c. 544, Art. II, § 2-103, p. 1706; Laws 1991, LB 161, § 3; Laws 1999, LB 550, § 54; Laws 2005, LB 570, § 30.

2-104 Definitions; merchant; between merchants; financing agency.

(1) “Merchant” means a person who deals in goods of the kind or otherwise by his or her occupation holds himself or herself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his or her employment of an agent

or broker or other intermediary who by his or her occupation holds himself or herself out as having such knowledge or skill.

(2) “Financing agency” means a bank, finance company, or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller’s draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. “Financing agency” includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 2-707).

(3) “Between merchants” means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Source: Laws 1963, c. 544, Art. II, § 2-104, p. 1708; Laws 2005, LB 570, § 31.

Part 2

FORM, FORMATION, AND READJUSTMENT OF CONTRACT

2-202 Final written expression; parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of performance, course of dealing, or usage of trade (section 1-303); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Source: Laws 1963, c. 544, Art. II, § 2-202, p. 1712; Laws 2005, LB 570, § 32.

2-208 Repealed. Laws 2005, LB 570, § 116.

Part 3

GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

2-310 Open time for payment or running of credit; authority to ship under reservation.

Unless otherwise agreed

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he or she may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section 2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

Source: Laws 1963, c. 544, Art. II, § 2-310, p. 1720; Laws 2005, LB 570, § 33.

2-323 Form of bill of lading required in overseas shipment; overseas.

(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (subsection (1) of section 2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing, or shipping practices characteristic of international deep water commerce.

Source: Laws 1963, c. 544, Art. II, § 2-323, p. 1729; Laws 2005, LB 570, § 34.

Part 4

TITLE, CREDITORS, AND GOOD FAITH PURCHASERS

2-401 Passing of title; reservation for security; limited application of this section.

Each provision of this article with regard to the rights, obligations, and remedies of the seller, the buyer, purchasers, or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by

the Uniform Commercial Code. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him or her to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he or she delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a “sale”.

Source: Laws 1963, c. 544, Art. II, § 2-401, p. 1733; Laws 1992, LB 861, § 11; Laws 2005, LB 570, § 35.

Part 5

PERFORMANCE

2-503 Manner of seller’s tender of delivery.

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer’s disposition and give the buyer any notification reasonably necessary to enable him or her to take delivery. The manner, time, and place for tender are determined by the agreement and this article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he or she comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a nonnegotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in article 9 receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he or she must tender all such documents in correct form, except as provided in this article with respect to bills of lading in a set (subsection (2) of section 2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

Source: Laws 1963, c. 544, Art. II, § 2-503, p. 1738; Laws 2005, LB 570, § 36.

2-505 Seller's shipment under reservation.

(1) Where the seller has identified goods to the contract by or before shipment:

(a) his or her procurement of a negotiable bill of lading to his or her own order or otherwise reserves in him or her a security interest in the goods. His or her procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a nonnegotiable bill of lading to himself or herself or his or her nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of section 2-507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title.

Source: Laws 1963, c. 544, Art. II, § 2-505, p. 1740; Laws 2005, LB 570, § 37.

2-506 Rights of financing agency.

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.

Source: Laws 1963, c. 544, Art. II, § 2-506, p. 1740; Laws 2005, LB 570, § 38.

2-509 Risk of loss in the absence of breach.

(1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him or her to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (section 2-505); but

(b) if it does require him or her to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his or her receipt of possession or control of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his or her receipt of possession or control of a nonnegotiable document of title or other direction to deliver in a record, as provided in subsection (4)(b) of section 2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his or her receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (section 2-327) and on effect of breach on risk of loss (section 2-510).

Source: Laws 1963, c. 544, Art. II, § 2-509, p. 1741; Laws 2005, LB 570, § 39.

Part 6

BREACH, REPUDIATION, AND EXCUSE

2-605 Waiver of buyer's objections by failure to particularize.

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him or her from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or
 (b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

Source: Laws 1963, c. 544, Art. II, § 2-605, p. 1747; Laws 2005, LB 570, § 40.

Part 7

REMEDIES

2-705 Seller's stoppage of delivery in transit or otherwise.

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he or she discovers the buyer to be insolvent (section 2-702) and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

- (a) receipt of the goods by the buyer; or
- (b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or
- (c) such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or
- (d) negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

Source: Laws 1963, c. 544, Art. II, § 2-705, p. 1756; Laws 2005, LB 570, § 41.

ARTICLE 2A

LEASES

Part 1. GENERAL PROVISIONS

Section

2A-103. Definitions and index of definitions.

2A-104. Leases subject to other law.

Part 2. FORMATION AND CONSTRUCTION OF LEASE CONTRACT

2A-207. Repealed. Laws 2005, LB 570, § 116.

Section

Part 5. DEFAULT

A. In General

2A-501. Default: procedure.

B. Default by Lessor

2A-514. Waiver of lessee's objections.

2A-518. Cover; substitute goods.

2A-519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.

C. Default by Lessee

2A-526. Lessor's stoppage of delivery in transit or otherwise.

2A-527. Lessor's rights to dispose of goods.

2A-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.

Part 1

GENERAL PROVISIONS

2A-103 Definitions and index of definitions.

(1) In this article unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed twenty-five thousand dollars.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture, or supply the goods;

(ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (section 2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law.

Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) “Leasehold interest” means the interest of the lessor or the lessee under a lease contract.

(n) “Lessee” means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) “Lessee in ordinary course of business” means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. “Leasing” may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) “Lessor” means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) “Lessor’s residual interest” means the lessor’s interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) “Lien” means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) “Lot” means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) “Merchant lessee” means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) “Purchase” includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) “Sublease” means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) “Supplier” means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) “Supply contract” means a contract under which a lessor buys or leases goods to be leased.

(z) “Termination” occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this article and the sections in which they appear are:

“Accessions”.	Section 2A-310(1).
“Construction mortgage”.	Section 2A-309(1)(d).
“Encumbrance”.	Section 2A-309(1)(e).
“Fixtures”.	Section 2A-309(1)(a).
“Fixture filing”.	Section 2A-309(1)(b).
“Purchase money lease”.	Section 2A-309(1)(c).

(3) The following definitions in other articles apply to this article:

“Account”.	Section 9-102(a)(2).
“Between merchants”.	Section 2-104(3).
“Buyer”.	Section 2-103(1)(a).
“Chattel paper”.	Section 9-102(a)(11).
“Consumer goods”.	Section 9-102(a)(23).
“Document”.	Section 9-102(a)(30).
“Entrusting”.	Section 2-403(3).
“General intangible”.	Section 9-102(a)(42).
“Good faith”.	Section 2-103(1)(b).
“Instrument”.	Section 9-102(a)(47).
“Merchant”.	Section 2-104(1).
“Mortgage”.	Section 9-102(a)(55).
“Pursuant to commitment”.	Section 9-102(a)(69).
“Receipt”.	Section 2-103(1)(c).
“Sale”.	Section 2-106(1).
“Sale on approval”.	Section 2-326.
“Sale or return”.	Section 2-326.
“Seller”.	Section 2-103(1)(d).

(4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Source: Laws 1991, LB 159, § 5; Laws 1999, LB 550, § 59; Laws 2005, LB 570, § 42; Laws 2011, LB90, § 1.

2A-104 Leases subject to other law.

(1) A lease, although subject to this article, is also subject to any applicable:

(a) certificate of title statute of this state (the Motor Vehicle Certificate of Title Act);

(b) certificate of title statute of another jurisdiction (section 2A-105); or

(c) consumer protection statute of this state, or final consumer protection decision of a court of this state existing on September 6, 1991.

(2) In case of conflict between this article, other than sections 2A-105, 2A-304(3), and 2A-305(3), and a statute or decision referred to in subsection (1), the statute or decision controls.

(3) Failure to comply with an applicable law has only the effect specified therein.

Source: Laws 1991, LB 159, § 6; Laws 1995, LB 589, § 11; Laws 2005, LB 276, § 113.

Cross References

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

Part 2

FORMATION AND CONSTRUCTION OF LEASE CONTRACT

2A-207 Repealed. Laws 2005, LB 570, § 116.

Part 5

DEFAULT

A. In General

2A-501 Default: procedure.

(1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this article.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this article and, except as limited by this article, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this article.

(4) Except as otherwise provided in section 1-305(a) or this article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this part does not apply.

Source: Laws 1991, LB 159, § 51; Laws 2005, LB 570, § 43.

B. Default by Lessor

2A-514 Waiver of lessee's objections.

(1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) if, stated seasonably, the lessor or the supplier could have cured it (section 2A-513); or

(b) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.

Source: Laws 1991, LB 159, § 64; Laws 2005, LB 570, § 44.

2A-518 Cover; substitute goods.

(1) After a default by a lessor under the lease contract of a type described in section 2A-508(1), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-302 and 2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and section 2A-519 governs.

Source: Laws 1991, LB 159, § 68; Laws 2005, LB 570, § 45.

2A-519 Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-302 and 2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 2A-518(2), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted goods and given notification (section 2A-516(3)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and

consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

Source: Laws 1991, LB 159, § 69; Laws 2005, LB 570, § 46.

C. Default by Lessee

2A-526 Lessor's stoppage of delivery in transit or otherwise.

(1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security, or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1), the lessor may stop delivery until

(a) receipt of the goods by the lessee;

(b) acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

Source: Laws 1991, LB 159, § 76; Laws 2005, LB 570, § 47.

2A-527 Lessor's rights to dispose of goods.

(1) After a default by a lessee under the lease contract of the type described in section 2A-523(1) or 2A-523(3)(a) or after the lessor refuses to deliver or takes possession of goods (section 2A-525 or 2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-302 and 2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed

under section 2A-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and section 2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (section 2A-508(5)).

Source: Laws 1991, LB 159, § 77; Laws 2005, LB 570, § 48.

2A-528 Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-302 and 2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 2A-527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 2A-523(1) or 2A-523(3)(a), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under section 2A-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under section 2A-530, due allowance for costs reasonably incurred, and due credit for payments or proceeds of disposition.

Source: Laws 1991, LB 159, § 78; Laws 2005, LB 570, § 49.

ARTICLE 3

NEGOTIABLE INSTRUMENTS

Part 1. GENERAL PROVISIONS AND DEFINITIONS

Section

3-103. Definitions.

3-104. Negotiable instrument.

Section

3-118. Statute of limitations.

Part 3. ENFORCEMENT OF INSTRUMENTS

3-309. Enforcement of lost, destroyed, or stolen instrument.

Part 4. LIABILITY OF PARTIES

3-416. Transfer warranties.

3-417. Presentment warranties.

Part 1

GENERAL PROVISIONS AND DEFINITIONS

3-103 Definitions.

(a) In this article:

(1) "Acceptor" means a drawee who has accepted a draft.

(2) "Drawee" means a person ordered in a draft to make payment.

(3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(4) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this article or article 4.

(8) "Party" means a party to an instrument.

(9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) "Prove" with respect to a fact means to meet the burden of establishing the fact (section 1-201(b)(8)).

(11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(b) Other definitions applying to this article and the sections in which they appear are:

"Acceptance".

Section 3-409.

"Accommodated party".

Section 3-419.

“Accommodation party”.	Section 3-419.
“Alteration”.	Section 3-407.
“Anomalous indorsement”.	Section 3-205.
“Blank indorsement”.	Section 3-205.
“Cashier’s check”.	Section 3-104.
“Certificate of deposit”.	Section 3-104.
“Certified check”.	Section 3-409.
“Check”.	Section 3-104.
“Consideration”.	Section 3-303.
“Demand draft”.	Section 3-104.
“Draft”.	Section 3-104.
“Holder in due course”.	Section 3-302.
“Incomplete instrument”.	Section 3-115.
“Indorsement”.	Section 3-204.
“Indorser”.	Section 3-204.
“Issue”.	Section 3-105.
“Issuer”.	Section 3-105.
“Negotiable instrument”.	Section 3-104.
“Negotiation”.	Section 3-201.
“Note”.	Section 3-104.
“Payable at a definite time”.	Section 3-108.
“Payable on demand”.	Section 3-108.
“Payable to bearer”.	Section 3-109.
“Payable to order”.	Section 3-109.
“Payment”.	Section 3-602.
“Person entitled to enforce”.	Section 3-301.
“Presentment”.	Section 3-501.
“Reacquisition”.	Section 3-207.
“Special indorsement”.	Section 3-205.
“Teller’s check”.	Section 3-104.
“Transfer of instrument”.	Section 3-203.
“Traveler’s check”.	Section 3-104.
“Value”.	Section 3-303.

(c) The following definitions in other articles apply to this article:

“Bank”.	Section 4-105.
“Banking day”.	Section 4-104.
“Clearinghouse”.	Section 4-104.
“Collecting bank”.	Section 4-105.
“Depositary bank”.	Section 4-105.
“Documentary draft”.	Section 4-104.
“Intermediary bank”.	Section 4-105.
“Item”.	Section 4-104.
“Payor bank”.	Section 4-105.
“Suspends payments”.	Section 4-104.

(d) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Source: Laws 1991, LB 161, § 7; Laws 2003, LB 128, § 1; Laws 2005, LB 570, § 50.

3-104 Negotiable instrument.

(a) Except as provided in subsections (c) and (d), “negotiable instrument” means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) is payable on demand or at a definite time; and

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) “Instrument” means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of “check” in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this article.

(e) An instrument is a “note” if it is a promise and is a “draft” if it is an order. If an instrument falls within the definition of both “note” and “draft”, a person entitled to enforce the instrument may treat it as either.

(f) “Check” means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank, (ii) a cashier’s check or teller’s check, or (iii) a demand draft. An instrument may be a check even though it is described on its face by another term, such as “money order”.

(g) “Cashier’s check” means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) “Teller’s check” means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(i) “Traveler’s check” means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term “traveler’s check” or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) “Certificate of deposit” means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

(k) “Demand draft” means a writing not signed by a customer, as defined in section 4-104, that is created by a third party under the purported authority of the customer for the purpose of charging the customer’s account with a bank. A demand draft shall contain the customer’s account number and may contain any or all of the following:

(i) The customer’s printed or typewritten name;

(ii) A notation that the customer authorized the draft; or

(iii) The statement “no signature required”, “authorization on file”, “signature on file”, or words to that effect.

Demand draft does not include a check purportedly drawn by and bearing the signature of a fiduciary, as defined in section 3-307.

Source: Laws 1991, LB 161, § 8; Laws 2003, LB 128, § 2.

3-118 Statute of limitations.

(a) Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

(b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten years.

(c) Except as provided in subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three years after dishonor of the draft or ten years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) Subject to the provisions of section 25-227, an action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or (ii) within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this article and not governed by this section must be commenced within three years after the cause of action accrues.

Source: Laws 1991, LB 161, § 22; Laws 2008, LB151, § 2.

Part 3

ENFORCEMENT OF INSTRUMENTS

3-309 Enforcement of lost, destroyed, or stolen instrument.

(a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person seeking to enforce the instrument (1) was entitled to enforce the instrument when loss of possession occurred or (2) had directly or

indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, section 3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

Source: Laws 1991, LB 161, § 39; Laws 2003, LB 128, § 3.

Part 4

LIABILITY OF PARTIES

3-416 Transfer warranties.

(a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

- (1) the warrantor is a person entitled to enforce the instrument;
- (2) all signatures on the instrument are authentic and authorized;
- (3) the instrument has not been altered;
- (4) the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor;
- (5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and

(6) if the instrument is a demand draft, creation of the instrument according to the terms on its face was authorized by the person identified as drawer.

(b) A person to whom the warranties under subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(e) If the warranty under subdivision (a)(6) of this section is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.

Source: Laws 1991, LB 161, § 57; Laws 2003, LB 128, § 4.

3-417 Presentment warranties.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) the draft has not been altered;

(3) the warrantor has no knowledge that the signature of the drawer of the draft is unauthorized; and

(4) if the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as drawer.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 3-404 or 3-405 or the drawer is precluded under section 3-406 or 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to

the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(g) A demand draft is a check as provided in subsection (f) of section 3-104.

(h) If the warranty under subdivision (a)(4) of this section is not given by a transferor under applicable conflict of law rules, then the warranty is not given to that transferor when that transferor is a transferee.

Source: Laws 1991, LB 161, § 58; Laws 2003, LB 128, § 5.

ARTICLE 4

BANK DEPOSITS AND COLLECTIONS

Part 1. GENERAL PROVISIONS AND DEFINITIONS

Section

4-104. Definitions and index of definitions.

Part 2. COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

4-207. Transfer warranties.

4-208. Presentment warranties.

4-210. Security interest of collecting bank in items, accompanying documents and proceeds.

Part 1

GENERAL PROVISIONS AND DEFINITIONS

4-104 Definitions and index of definitions.

(a) In this article, unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions but, for purposes of a bank's midnight deadline, shall not include Saturday, Sunday, or any holiday when the federal reserve banks are not performing check clearing functions;

(4) "Clearinghouse" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (section 8-102) or instructions for uncertificated securities (section 8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) “Draft” means a draft as defined in section 3-104 or an item, other than an instrument, that is an order;

(8) “Drawee” means a person ordered in a draft to make payment;

(9) “Item” means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by article 4A or a credit or debit card slip;

(10) “Midnight deadline” with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) “Settle” means to pay in cash, by clearinghouse settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(12) “Suspends payments” with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this article and the sections in which they appear are:

“Agreement for electronic presentment”.	Section 4-110.
“Bank”.	Section 4-105.
“Collecting bank”.	Section 4-105.
“Depositary bank”.	Section 4-105.
“Intermediary bank”.	Section 4-105.
“Payor bank”.	Section 4-105.
“Presenting bank”.	Section 4-105.
“Presentment notice”.	Section 4-110.

(c) “Control” as provided in section 7-106 and the following definitions in other articles apply to this article:

“Acceptance”.	Section 3-409.
“Alteration”.	Section 3-407.
“Cashier’s check”.	Section 3-104.
“Certificate of deposit”.	Section 3-104.
“Certified check”.	Section 3-409.
“Check”.	Section 3-104.
“Good faith”.	Section 3-103.
“Holder in due course”.	Section 3-302.
“Instrument”.	Section 3-104.
“Notice of dishonor”.	Section 3-503.
“Order”.	Section 3-103.
“Ordinary care”.	Section 3-103.
“Person entitled to enforce”.	Section 3-301.
“Presentment”.	Section 3-501.
“Promise”.	Section 3-103.
“Prove”.	Section 3-103.
“Teller’s check”.	Section 3-104.
“Unauthorized signature”.	Section 3-403.

(d) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Source: Laws 1963, c. 544, Art. IV, § 4-104, p. 1812; Laws 1991, LB 161, § 75; Laws 1994, LB 1015, § 1; Laws 1995, LB 97, § 3; Laws 2005, LB 570, § 51.

Part 2

COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

4-207 Transfer warranties.

(a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

- (1) the warrantor is a person entitled to enforce the item;
- (2) all signatures on the item are authentic and authorized;
- (3) the item has not been altered;
- (4) the item is not subject to a defense or claim in recoupment (section 3-305(a)) of any party that can be asserted against the warrantor;
- (5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and
- (6) if the item is a demand draft, creation of the item according to the terms on its face was authorized by the person identified as drawer.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in sections 3-115 and 3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(f) If the warranty under subdivision (a)(6) of this section is not given by a transferor or collecting bank under applicable conflict of law rules, the warran-

ty is not given to that transferor when that transferor is a transferee or to any prior collecting bank of that transferee.

Source: Laws 1963, c. 544, Art. IV, § 4-207, p. 1818; Laws 1991, LB 161, § 89; Laws 2003, LB 128, § 6.

4-208 Presentment warranties.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) the draft has not been altered;

(3) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized; and

(4) if the draft is a demand draft, creation of the demand draft according to the terms on its face was authorized by the person identified as drawer.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 3-404 or 3-405 or the drawer is precluded under section 3-406 or 4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(g) A demand draft is a check as provided in subsection (f) of section 3-104.

(h) If the warranty under subdivision (a)(4) of this section is not given by a transferor under applicable conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee.

Source: Laws 1963, c. 544, Art. IV, § 4-208, p. 1820; Laws 1991, LB 161, § 90; Laws 2003, LB 128, § 7.

4-210 Security interest of collecting bank in items, accompanying documents and proceeds.

(a) A collecting bank has a security interest in an item and any accompanying documents, or the proceeds of either:

(1) in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of chargeback; or

(3) if it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents, or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to article 9, but:

(1) no security agreement is necessary to make the security interest enforceable (section 9-203(b)(3)(A));

(2) no filing is required to perfect the security interest; and

(3) the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

Source: Laws 1963, c. 544, Art. IV, § 4-210, p. 1821; Laws 1991, LB 161, § 92; Laws 1999, LB 550, § 63; Laws 2005, LB 570, § 52.

ARTICLE 4A

FUNDS TRANSFERS

Part 1. SUBJECT MATTER AND DEFINITIONS

Section

4A-105. Other definitions.

4A-106. Time payment order is received.

4A-108. Relationship to Electronic Fund Transfer Act.

Part 2. ISSUE AND ACCEPTANCE OF PAYMENT ORDER

4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

Part 1

SUBJECT MATTER AND DEFINITIONS

4A-105 Other definitions.

(a) In this article:

(1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this article.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) "Funds-transfer system" means a wire transfer network, automated clearinghouse, or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) "Prove" with respect to a fact means to meet the burden of establishing the fact (section 1-201(b)(8)).

(b) Other definitions applying to this article and the sections in which they appear are:

"Acceptance".	Section 4A-209.
"Beneficiary".	Section 4A-103.
"Beneficiary's bank".	Section 4A-103.
"Executed".	Section 4A-301.
"Execution date".	Section 4A-301.
"Funds transfer".	Section 4A-104.
"Funds-transfer system rule".	Section 4A-501.
"Intermediary bank".	Section 4A-104.
"Originator".	Section 4A-104.
"Originator's bank".	Section 4A-104.
"Payment by beneficiary's bank to beneficiary".	Section 4A-405.
"Payment by originator to beneficiary".	Section 4A-406.
"Payment by sender to receiving bank".	Section 4A-403.
"Payment date".	Section 4A-401.
"Payment order".	Section 4A-103.
"Receiving bank".	Section 4A-103.
"Security procedure".	Section 4A-201.
"Sender".	Section 4A-103.

(c) The following definitions in article 4 apply to this article:

“Clearinghouse”.	Section 4-104.
“Item”.	Section 4-104.
“Suspends payments”.	Section 4-104.

(d) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Source: Laws 1991, LB 160, § 6; Laws 2005, LB 570, § 53.

4A-106 Time payment order is received.

(a) The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section 1-202. A receiving bank may fix a cutoff time or times on a funds-transfer business day for the receipt and processing of payment orders and communications canceling or amending payment orders. Different cutoff times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cutoff time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this article.

Source: Laws 1991, LB 160, § 7; Laws 2005, LB 570, § 54.

4A-108 Relationship to Electronic Fund Transfer Act.

(a) Except as provided in subsection (b), this article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq., as such act existed on January 1, 2013.

(b) This article applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act, 15 U.S.C. 1693o-1, as such section existed on January 1, 2013, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act, 15 U.S.C. 1693a, as such section existed on January 1, 2013.

(c) In a funds transfer to which this article applies, in the event of an inconsistency between an applicable provision of this article and an applicable provision of the Electronic Fund Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency.

Source: Laws 1991, LB 160, § 9; Laws 2013, LB146, § 1.

Part 2

ISSUE AND ACCEPTANCE OF PAYMENT ORDER

4A-204 Refund of payment and duty of customer to report with respect to unauthorized payment order.

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under section 4A-202, or (ii) not enforceable, in whole or in part, against the customer under section 4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) may be fixed by agreement as stated in section 1-302(b), but the obligation of a receiving bank to refund payment as stated in subsection (a) may not otherwise be varied by agreement.

Source: Laws 1991, LB 160, § 13; Laws 2005, LB 570, § 55.

ARTICLE 5

LETTERS OF CREDIT

Part 1. GENERAL PROVISIONS

Section
5-103. Scope.

Part 1

GENERAL PROVISIONS

5-103 Scope.

(a) This article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this article.

(c) With the exception of this subsection, subsections (a) and (d), sections 5-102(a)(9) and (10), 5-106(d), and 5-114(d), and except to the extent prohibited in sections 1-302 and 5-117(d), the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

Source: Laws 1996, LB 1028, § 5; Laws 2005, LB 570, § 56.

DOCUMENTS OF TITLE

ARTICLE 7

DOCUMENTS OF TITLE

Part 1. GENERAL

Section

- 7-101. Short title.
- 7-102. Definitions and index of definitions.
- 7-103. Relation of article to treaty or statute.
- 7-104. Negotiable and nonnegotiable document of title.
- 7-105. Reissuance in alternative medium.
- 7-106. Control of electronic document of title.

Part 2. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

- 7-201. Person that may issue a warehouse receipt; storage under bond.
- 7-202. Form of warehouse receipt; effect of omission.
- 7-203. Liability for nonreceipt or misdescription.
- 7-204. Duty of care; contractual limitation of warehouse's liability.
- 7-205. Title under warehouse receipt defeated in certain cases.
- 7-206. Termination of storage at warehouse's option.
- 7-207. Goods must be kept separate; fungible goods.
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Part 1

GENERAL

7-101 Short title.

This article may be cited as Uniform Commercial Code—Documents of Title.

Source: Laws 2005, LB 570, § 57.

7-102 Definitions and index of definitions.

(a) In this article, unless the context otherwise requires:

(1) “Bailee” means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(2) “Carrier” means a person that issues a bill of lading.

(3) “Consignee” means a person named in a bill of lading to which or to whose order the bill promises delivery.

(4) “Consignor” means a person named in a bill of lading as the person from which the goods have been received for shipment.

(5) “Delivery order” means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(6) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) “Goods” means all things that are treated as movable for the purposes of a contract for storage or transportation.

(8) “Issuer” means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer’s instructions.

(9) “Person entitled under the document” means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(10) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic sound, symbol, or process.

(12) “Shipper” means a person that enters into a contract of transportation with a carrier.

(13) “Warehouse” means a person engaged in the business of storing goods for hire.

(b) Definitions in other articles applying to this article and the sections in which they appear are:

(1) “Contract for sale”, section 2-106.

(2) “Lessee in ordinary course of business”, section 2A-103.

(3) “Receipt” of goods, section 2-103.

(c) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Source: Laws 2005, LB 570, § 58.

7-103 Relation of article to treaty or statute.

(a) This article is subject to any treaty or statute of the United States or regulatory statute of this state to the extent the treaty, statute, or regulatory statute is applicable.

(b) This article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee’s business in respects not specifically treated in this article. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. section 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. section 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. section 7003(b)).

(d) To the extent there is a conflict between the Uniform Electronic Transactions Act and this article, this article governs.

Source: Laws 2005, LB 570, § 59.

7-104 Negotiable and nonnegotiable document of title.

(a) Except as otherwise provided in subsection (c), a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in subsection (a) is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

Source: Laws 2005, LB 570, § 60.

7-105 Reissuance in alternative medium.

(a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) the person entitled under the electronic document surrenders control of the document to the issuer; and

(2) the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a):

(1) the electronic document ceases to have any effect or validity; and

(2) the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) the person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c):

(1) the tangible document ceases to have any effect or validity; and

(2) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

Source: Laws 2005, LB 570, § 61.

7-106 Control of electronic document of title.

(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a), and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the document was issued; or

(B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

Source: Laws 2005, LB 570, § 62.

Part 2

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

7-201 Person that may issue a warehouse receipt; storage under bond.

(a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

Source: Laws 2005, LB 570, § 63.

7-202 Form of warehouse receipt; effect of omission.

(a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(1) a statement of the location of the warehouse facility where the goods are stored;

(2) the date of issue of the receipt;

(3) the unique identification code of the receipt;

(4) a statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

(5) the rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

(6) a description of the goods or the packages containing them;

(7) the signature of the warehouse or its agent;

(8) if the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and

(9) a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to the Uniform Commercial Code and do not impair its obligation of delivery under section 7-403 or its duty of care under section 7-204. Any contrary provision is ineffective.

Source: Laws 2005, LB 570, § 64.

7-203 Liability for nonreceipt or misdescription.

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) the document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by “contents, condition, and quality unknown”, “said to contain”, or words of similar import, if the indication is true; or

(2) the party or purchaser otherwise has notice of the nonreceipt or misdescription.

Source: Laws 2005, LB 570, § 65.

7-204 Duty of care; contractual limitation of warehouse’s liability.

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse’s liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse’s liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

(d) This section does not modify or repeal any law of this state that imposes a higher responsibility upon the warehouse or invalidates contractual limitations that would be permissible under this article.

Source: Laws 2005, LB 570, § 66.

7-205 Title under warehouse receipt defeated in certain cases.

A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods

takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

Source: Laws 2005, LB 570, § 67.

7-206 Termination of storage at warehouse's option.

(a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to section 7-210.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) and section 7-210, the warehouse may specify in the notice given under subsection (a) any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this article upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

Source: Laws 2005, LB 570, § 68.

7-207 Goods must be kept separate; fungible goods.

(a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

Source: Laws 2005, LB 570, § 69.

7-208 Altered warehouse receipts.

If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

Source: Laws 2005, LB 570, § 70.

7-209 Lien of warehouse.

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a), such as for money advanced and interest. The security interest is governed by article 9.

(c) A warehouse's lien for charges and expenses under subsection (a) or a security interest under subsection (b) is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) actual or apparent authority to ship, store, or sell;

(B) power to obtain delivery under section 7-403; or

(C) power of disposition under section 2-403, 2A-304(2), 2A-305(2), 9-320, or 9-321(c) or other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

Source: Laws 2005, LB 570, § 71.

7-210 Enforcement of warehouse's lien.

(a) Except as otherwise provided in subsection (b), a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

(1) All persons known to claim an interest in the goods must be notified.

(2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(3) The sale must conform to the terms of the notification.

(4) The sale must be held at the nearest suitable place to where the goods are held or stored.

(5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this article.

(d) A warehouse may buy at any public sale held pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (a) or (b).

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

Source: Laws 2005, LB 570, § 72.

Part 3

BILLS OF LADING: SPECIAL PROVISIONS

7-301 Liability for nonreceipt or misdescription; "said to contain"; "shipper's weight, load, and count"; improper handling.

(a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load, and count", or words of similar import, if that indication is true.

(b) If goods are loaded by the issuer of a bill of lading:

(1) the issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and

(2) words such as "shipper's weight, load, and count", or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.

(d) The issuer of a bill of lading, by including in the bill the words "shipper's weight, load, and count", or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer's responsibility or liability under the contract of carriage to any person other than the shipper.

Source: Laws 2005, LB 570, § 73.

7-302 Through bills of lading and similar documents of title.

(a) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in subsection (a) is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

(1) the amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

(2) the amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

Source: Laws 2005, LB 570, § 74.

7-303 Diversion; reconsignment; change of instructions.

(a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(1) the holder of a negotiable bill;

(2) the consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

(3) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if

the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) the consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subsection (a) are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

Source: Laws 2005, LB 570, § 75.

7-304 Tangible bills of lading in a set.

(a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee shall deliver in accordance with part 4 against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

Source: Laws 2005, LB 570, § 76.

7-305 Destination bills.

(a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to section 7-105, may procure a substitute bill to be issued at any place designated in the request.

Source: Laws 2005, LB 570, § 77.

7-306 Altered bills of lading.

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

Source: Laws 2005, LB 570, § 78.

7-307 Lien of carrier.

(a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(b) A lien for charges and expenses under subsection (a) on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (a) is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

Source: Laws 2005, LB 570, § 79.

7-308 Enforcement of carrier's lien.

(a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this article.

(c) A carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier's lien may be enforced pursuant to either subsection (a) or the procedure set forth in section 7-210(b).

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

Source: Laws 2005, LB 570, § 80.

7-309 Duty of care; contractual limitation of carrier's liability.

(a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

Source: Laws 2005, LB 570, § 81.

Part 4

WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

7-401 Irregularities in issue of receipt or bill or conduct of issuer.

The obligations imposed by this article on an issuer apply to a document of title even if:

- (1) the document does not comply with the requirements of this article or of any other statute, rule, or regulation regarding its issuance, form, or content;
- (2) the issuer violated laws regulating the conduct of its business;
- (3) the goods covered by the document were owned by the bailee when the document was issued; or
- (4) the person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

Source: Laws 2005, LB 570, § 82.

7-402 Duplicate document of title; overissue.

A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to

section 7-105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

Source: Laws 2005, LB 570, § 83.

7-403 Obligation of bailee to deliver; excuse.

(a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (b) and (c), unless and to the extent that the bailee establishes any of the following:

(1) delivery of the goods to a person whose receipt was rightful as against the claimant;

(2) damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

(3) previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

(4) the exercise by a seller of its right to stop delivery pursuant to section 2-705 or by a lessor of its right to stop delivery pursuant to section 2A-526;

(5) a diversion, reconsignment, or other disposition pursuant to section 7-303;

(6) release, satisfaction, or any other personal defense against the claimant; or

(7) any other lawful excuse.

(b) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Unless a person claiming the goods is a person against which the document of title does not confer a right under section 7-503(a):

(1) the person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) the bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

Source: Laws 2005, LB 570, § 84.

7-404 No liability for good faith delivery pursuant to document of title.

A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this article is not liable for the goods even if:

(1) the person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

(2) the person to which the bailee delivered the goods did not have authority to receive the goods.

Source: Laws 2005, LB 570, § 85.

Part 5

WAREHOUSE RECEIPTS AND BILLS OF LADING:
NEGOTIATION AND TRANSFER**7-501 Form of negotiation and requirements of due negotiation.**

(a) The following rules apply to a negotiable tangible document of title:

(1) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

(2) If the document's original terms run to bearer, it is negotiated by delivery alone.

(3) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.

(4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.

(5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

(2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

Source: Laws 2005, LB 570, § 86.

7-502 Rights acquired by due negotiation.

(a) Subject to sections 7-205 and 7-503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

(1) title to the document;

(2) title to the goods;

(3) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(4) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this article, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to section 7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

(1) the due negotiation or any prior due negotiation constituted a breach of duty;

(2) any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

(3) a previous sale or other transfer of the goods or document has been made to a third person.

Source: Laws 2005, LB 570, § 87.

7-503 Document of title to goods defeated in certain cases.

(a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

(1) deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) actual or apparent authority to ship, store, or sell;

(B) power to obtain delivery under section 7-403; or

(C) power of disposition under section 2-403, 2A-304(2), 2A-305(2), 9-320, or 9-321(c) or other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under section 7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with part 4 pursuant to its own bill of lading discharges the carrier's obligation to deliver.

Source: Laws 2005, LB 570, § 88.

7-504 Rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery.

(a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

(1) by those creditors of the transferor which could treat the transfer as void under section 2-402 or 2A-308;

(2) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

(3) by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) as against the bailee, by good faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under section 2-705 or a lessor under section 2A-526, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

Source: Laws 2005, LB 570, § 89.

7-505 Indorser not guarantor for other parties.

The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

Source: Laws 2005, LB 570, § 90.

7-506 Delivery without indorsement: right to compel indorsement.

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

Source: Laws 2005, LB 570, § 91.

7-507 Warranties on negotiation or delivery of document of title.

If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under section 7-508, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

- (1) the document is genuine;
- (2) the transferor does not have knowledge of any fact that would impair the document's validity or worth; and
- (3) the negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

Source: Laws 2005, LB 570, § 92.

7-508 Warranties of collecting bank as to documents of title.

A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

Source: Laws 2005, LB 570, § 93.

7-509 Adequate compliance with commercial contract.

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by article 2, 2A, or 5.

Source: Laws 2005, LB 570, § 94.

Part 6

WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

7-601 Lost, stolen, or destroyed documents of title.

(a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.

(b) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one year after the delivery.

Source: Laws 2005, LB 570, § 95.

7-602 Judicial process against goods covered by negotiable document of title.

Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by

virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

Source: Laws 2005, LB 570, § 96.

7-603 Conflicting claims; interpleader.

If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

Source: Laws 2005, LB 570, § 97.

Part 7

MISCELLANEOUS PROVISIONS

7-701 Omitted.

7-702 Omitted.

7-703 Applicability.

This article applies to a document of title that is issued or a bailment that arises on or after January 1, 2006. This article does not apply to a document of title that is issued or a bailment that arises before January 1, 2006, even if the document of title or bailment would be subject to this article if the document of title had been issued or bailment had arisen on or after January 1, 2006. This article does not apply to a right of action that has accrued before January 1, 2006.

Source: Laws 2005, LB 570, § 98.

7-704 Savings clause.

A document of title issued or a bailment that arises before January 1, 2006, and the rights, obligations, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by Laws 2005, LB 570, as if amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

Source: Laws 2005, LB 570, § 99.

ARTICLE 8

INVESTMENT SECURITIES

Part 1. SHORT TITLE AND GENERAL MATTERS

Section

8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

Part 1

SHORT TITLE AND GENERAL MATTERS

8-103 Rules for determining whether certain obligations and interests are securities or financial assets.

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An “investment company security” is a security. “Investment company security” means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this article and not by article 3, even though it also meets the requirements of that article. However, a negotiable instrument governed by article 3 is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in section 9-102(a)(15), is not a security or a financial asset.

(g) A document of title is not a financial asset unless section 8-102(a)(9)(iii) applies.

Source: Laws 1995, LB 97, § 7; Laws 1999, LB 550, § 66; Laws 2005, LB 570, § 100.

ARTICLE 9**SECURED TRANSACTIONS**

Part 1. GENERAL PROVISIONS

Subpart 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

Section

- 9-101. Short title.
 9-102. Definitions and index of definitions.
 9-105. Control of electronic chattel paper.

Part 2. EFFECTIVENESS OF SECURITY AGREEMENT;
 ATTACHMENT OF SECURITY INTEREST; RIGHTS
 OF PARTIES TO SECURITY AGREEMENT

Subpart 1. EFFECTIVENESS AND ATTACHMENT

- 9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

Subpart 2. RIGHTS AND DUTIES

- 9-207. Rights and duties of secured party having possession or control of collateral.

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Section

9-208. Additional duties of secured party having control of collateral.

Part 3. PERFECTION AND PRIORITY

Subpart 1. LAW GOVERNING PERFECTION AND PRIORITY

9-301. Law governing perfection and priority of security interests.

9-304. Law governing perfection and priority of security interests in deposit accounts.

9-307. Location of debtor.

Subpart 2. PERFECTION

9-309. Security interest perfected upon attachment.

9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

9-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.

9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

9-313. When possession by or delivery to secured party perfects security interest without filing.

9-314. Perfection by control.

9-315. Secured party's rights on disposition of collateral and in proceeds.

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9-513A. Unauthorized financing statement filings; procedures; remedies.

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9-521. Uniform form of written financing statement and amendment.

9-522. Maintenance and destruction of records.

9-523. Information from filing office; sale or license of records.

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- 9-530. Filing information; Secretary of State; duties.
 9-531. Uniform Commercial Code Cash Fund; created; use; Secretary of State; duties; fees.

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Part 1

GENERAL PROVISIONS

Subpart 1

SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

9-101 Short title.

This article may be cited as Uniform Commercial Code - Secured Transactions.

Source: Laws 1999, LB 550, § 74; Laws 2013, LB210, § 2.

9-102 Definitions and index of definitions.

(a) In this article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evi-

denced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) “Account debtor” means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) “Accounting”, except as used in “accounting for”, means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) “Agricultural lien” means an interest in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor’s farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor’s farming operation; or

(ii) leased real property to a debtor in connection with the debtor’s farming operation; and

(C) whose effectiveness does not depend on the person’s possession of the personal property.

The term also includes every lien created under sections 52-202, 52-501, 52-701, 52-901, 52-1101, 52-1201, 54-201, and 54-208, Reissue Revised Statutes of Nebraska, and Chapter 52, article 14, Reissue Revised Statutes of Nebraska.

(6) “As-extracted collateral” means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) “Authenticate” means:

(A) to sign; or

(B) with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

(8) “Bank” means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) “Cash proceeds” means proceeds that are money, checks, deposit accounts, or the like.

(10) “Certificate of title” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) “Chattel paper” means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subdivision, “monetary obligation” means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) “Collateral” means the property subject to a security interest or agricultural lien. The term includes:

(A) proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(13) “Commercial tort claim” means a claim arising in tort with respect to which:

(A) the claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) arose in the course of the claimant’s business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual.

(14) “Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) “Commodity contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) “Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.

(17) “Commodity intermediary” means a person that:

(A) is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) “Communicate” means:

(A) to send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) “Consignee” means a merchant to which goods are delivered in a consignment.

(20) “Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) “Consignor” means a person that delivers goods to a consignee in a consignment.

(22) “Consumer debtor” means a debtor in a consumer transaction.

(23) “Consumer goods” means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) “Consumer-goods transaction” means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) “Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) “Consumer transaction” means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) “Continuation statement” means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) “Debtor” means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) “Document” means a document of title or a receipt of the type described in section 7-201(b).

(31) “Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) “Encumbrance” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) “Equipment” means goods other than inventory, farm products, or consumer goods.

(34) “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) “Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) “File number” means the number assigned to an initial financing statement pursuant to section 9-519(a).

(37) “Filing office” means an office designated in section 9-501 as the place to file a financing statement.

(38) “Filing-office rule” means a rule adopted pursuant to section 9-526.

(39) “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) “Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) “Goods” means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) “Governmental unit” means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) “Health-care-insurance receivable” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided or to be provided.

(47) “Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment including, but not limited to, a writing that would otherwise qualify as a certificate of deposit (defined in section 3-104(j)) but for the fact that the writing contains a limitation on transfer. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) “Inventory” means goods, other than farm products, which:

(A) are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) “Investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) “Jurisdiction of organization”, with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(51) “Letter-of-credit right” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) “Lien creditor” means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) “Manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subdivision except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) “Manufactured-home transaction” means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) “Mortgage” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) “New debtor” means a person that becomes bound as debtor under section 9-203(d) by a security agreement previously entered into by another person.

(57) “New value” means (i) money, (ii) money’s worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) “Noncash proceeds” means proceeds other than cash proceeds.

(59) “Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) “Original debtor”, except as used in section 9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 9-203(d).

(61) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.

(62) “Person related to”, with respect to an individual, means:

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual’s spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual’s spouse who shares the same home with the individual.

(63) “Person related to”, with respect to an organization, means:

(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in subdivision (A);

(D) the spouse of an individual described in subdivision (A), (B), or (C); or

(E) an individual who is related by blood or marriage to an individual described in subdivision (A), (B), (C), or (D) and shares the same home with the individual.

(64) “Proceeds”, except as used in section 9-609(b), means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) “Promissory note” means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) “Proposal” means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 9-620, 9-621, and 9-622.

(67) “Public-finance transaction” means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) “Public organic record” means a record that is available to the public for inspection and is:

(A) a record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;

(B) an organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(C) a record consisting of legislation enacted by the legislature of a state or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or United States which amends or restates the name of the organization.

(69) “Pursuant to commitment”, with respect to an advance made or other value given by a secured party, means pursuant to the secured party’s obligation, whether or not a subsequent event of default or other event not within the secured party’s control has relieved or may relieve the secured party from its obligation.

(70) “Record”, except as used in “for record”, “of record”, “record or legal title”, and “record owner”, means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(71) “Registered organization” means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust’s organic record be filed with the state.

(72) “Secondary obligor” means an obligor to the extent that:

(A) the obligor’s obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(73) “Secured party” means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210, or 5-118.

(74) “Security agreement” means an agreement that creates or provides for a security interest.

(75) “Send”, in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subdivision (A).

(76) “Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(77) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(78) “Supporting obligation” means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(79) “Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(80) “Termination statement” means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(81) “Transmitting utility” means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(b) “Control” as provided in section 7-106 and the following definitions in other articles apply to this article:

“Applicant”.	Section 5-102.
“Beneficiary”.	Section 5-102.
“Broker”.	Section 8-102.
“Certificated security”.	Section 8-102.
“Check”.	Section 3-104.
“Clearing corporation”.	Section 8-102.
“Contract for sale”.	Section 2-106.
“Customer”.	Section 4-104.
“Entitlement holder”.	Section 8-102.
“Financial asset”.	Section 8-102.
“Holder in due course”.	Section 3-302.
“Issuer” (with respect to a letter of credit or letter-of-credit right).	Section 5-102.
“Issuer” (with respect to a security).	Section 8-201.
“Issuer” (with respect to a document of title).	Section 7-102.
“Lease”.	Section 2A-103.
“Lease agreement”.	Section 2A-103.
“Lease contract”.	Section 2A-103.
“Leasehold interest”.	Section 2A-103.
“Lessee”.	Section 2A-103.
“Lessee in ordinary course of business”.	Section 2A-103.
“Lessor”.	Section 2A-103.
“Lessor’s residual interest”.	Section 2A-103.
“Letter of credit”.	Section 5-102.
“Merchant”.	Section 2-104.
“Negotiable instrument”.	Section 3-104.
“Nominated person”.	Section 5-102.
“Note”.	Section 3-104.
“Proceeds of a letter of credit”.	Section 5-114.
“Prove”.	Section 3-103.
“Sale”.	Section 2-106.
“Securities account”.	Section 8-501.
“Securities intermediary”.	Section 8-102.
“Security”.	Section 8-102.
“Security certificate”.	Section 8-102.
“Security entitlement”.	Section 8-102.
“Uncertificated security”.	Section 8-102.

(c) Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Source: Laws 1999, LB 550, § 75; Laws 2000, LB 929, § 25; Laws 2001, LB 54, § 28; Laws 2005, LB 570, § 101; Laws 2011, LB90, § 2.

9-105 Control of electronic chattel paper.

(a) A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) A system satisfies subsection (a) if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in subdivisions (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the secured party as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

Source: Laws 1999, LB 550, § 78; Laws 2011, LB90, § 3.

Part 2

EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT

Subpart 1

EFFECTIVENESS AND ATTACHMENT

9-203 Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

(a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) one of the following conditions is met:

(A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under section 9-313 pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 8-301 pursuant to the debtor's security agreement; or

(D) the collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under section 7-106, 9-104, 9-105, 9-106, or 9-107 pursuant to the debtor's security agreement.

(c) Subsection (b) is subject to section 4-210 on the security interest of a collecting bank, section 5-118 on the security interest of a letter-of-credit issuer or nominated person, section 9-110 on a security interest arising under article 2 or 2A, and section 9-206 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:

(1) the security agreement becomes effective to create a security interest in the person's property; or

(2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) the agreement satisfies subdivision (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by section 9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

Source: Laws 1999, LB 550, § 86; Laws 2005, LB 570, § 102.

Subpart 2

RIGHTS AND DUTIES

9-207 Rights and duties of secured party having possession or control of collateral.

(a) Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

(1) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) the secured party may use or operate the collateral:

(A) for the purpose of preserving the collateral or its value;

(B) as permitted by an order of a court having competent jurisdiction; or

(C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under section 7-106, 9-104, 9-105, 9-106, or 9-107:

(1) may hold as additional security any proceeds, except money or funds, received from the collateral;

(2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) may create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) to charge back uncollected collateral; or

(B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) subsections (b) and (c) do not apply.

Source: Laws 1999, LB 550, § 90; Laws 2005, LB 570, § 103.

9-208 Additional duties of secured party having control of collateral.

(a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten days after receiving an authenticated demand by the debtor:

(1) a secured party having control of a deposit account under section 9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under section 9-104(a)(3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control of electronic chattel paper under section 9-105 shall:

(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) a secured party having control of investment property under section 8-106(d)(2) or 9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) a secured party having control of a letter-of-credit right under section 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) a secured party having control of an electronic document shall:

(A) give control of the electronic document to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

Source: Laws 1999, LB 550, § 91; Laws 2005, LB 570, § 104.

Part 3

PERFECTION AND PRIORITY

Subpart 1

LAW GOVERNING PERFECTION AND PRIORITY

9-301 Law governing perfection and priority of security interests.

Except as otherwise provided in sections 9-303 to 9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subdivision (4), while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

Source: Laws 1999, LB 550, § 94; Laws 2005, LB 570, § 105.

9-304 Law governing perfection and priority of security interests in deposit accounts.

(a) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) The following rules determine a bank's jurisdiction for purposes of this part:

(1) If an agreement between the bank and its customer governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this article, or the Uniform Commercial Code, that jurisdiction is the bank's jurisdiction.

(2) If subdivision (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither subdivision (1) nor subdivision (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding subdivisions applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding subdivisions applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

Source: Laws 1999, LB 550, § 97; Laws 2011, LB90, § 4.

9-307 Location of debtor.

(a) In this section, "place of business" means a place where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) A registered organization that is organized under the law of a state is located in that state.

(f) Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) in the state that the law of the United States designates, if the law designates a state of location;

(2) in the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office, or other comparable office; or

(3) in the District of Columbia, if neither subdivision (1) nor subdivision (2) applies.

(g) A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) the dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this part.

Source: Laws 1999, LB 550, § 100; Laws 2011, LB90, § 5.

Subpart 2

PERFECTION

9-309 Security interest perfected upon attachment.

The following security interests are perfected when they attach:

(1) a purchase-money security interest in consumer goods, except as otherwise provided in section 9-311(b) with respect to consumer goods that are subject to a statute, regulation, or treaty described in section 9-311(a);

(2) an assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) a sale of a payment intangible;

(4) a sale of a promissory note;

(5) a security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

(6) a security interest arising under section 2-401, 2-505, 2-711(3), or 2A-508(5), until the debtor obtains possession of the collateral;

(7) a security interest of a collecting bank arising under section 4-210;

(8) a security interest of an issuer or nominated person arising under section 5-118;

(9) a security interest arising in the delivery of a financial asset under section 9-206(c);

(10) a security interest in investment property created by a broker or securities intermediary;

(11) a security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder;

(13) a security interest created by an assignment of a beneficial interest in a decedent's estate; and

(14) a sale by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

Source: Laws 1999, LB 550, § 102; Laws 2011, LB90, § 6.

9-310 When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

(a) Except as otherwise provided in subsection (b) and section 9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) The filing of a financing statement is not necessary to perfect a security interest:

(1) that is perfected under section 9-308(d), (e), (f), or (g);

(2) that is perfected under section 9-309 when it attaches;

(3) in property subject to a statute, regulation, or treaty described in section 9-311(a);

(4) in goods in possession of a bailee which is perfected under section 9-312(d)(1) or (2);

(5) in certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under section 9-312(e), (f), or (g);

(6) in collateral in the secured party's possession under section 9-313;

(7) in a certificated security which is perfected by delivery of the security certificate to the secured party under section 9-313;

(8) in deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under section 9-314;

(9) in proceeds which is perfected under section 9-315; or

(10) that is perfected under section 9-316.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

Source: Laws 1999, LB 550, § 103; Laws 2005, LB 570, § 106.

9-311 Perfection of security interests in property subject to certain statutes, regulations, and treaties.

(a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt section 9-310(a);

(2) the following statutes of this state: (i) sections 60-164 and 60-165, Reissue Revised Statutes of Nebraska, but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of part 5 apply to a security interest in that collateral created by him or her as debtor; and (ii) section 37-1282, Reissue Revised Statutes of Nebraska, but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of part 5 apply to a security interest in that collateral created by him or her as debtor; or

(3) a statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) and sections 9-313 and 9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subsection (d) and section 9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(d) During any period in which collateral subject to a statute specified in subdivision (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

Source: Laws 1999, LB 550, § 104; Laws 2000, LB 929, § 28; Laws 2005, LB 276, § 114; Laws 2011, LB90, § 7.

9-312 Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

(a) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Except as otherwise provided in section 9-315(c) and (d) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under section 9-314;

(2) and except as otherwise provided in section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under section 9-314; and

(3) a security interest in money may be perfected only by the secured party's taking possession under section 9-313.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party

makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the twenty-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this article.

Source: Laws 1999, LB 550, § 105; Laws 2005, LB 570, § 107.

9-313 When possession by or delivery to secured party perfects security interest without filing.

(a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 8-301.

(b) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in section 9-316(d).

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) If a person acknowledges that it holds possession for the secured party's benefit:

(1) the acknowledgment is effective under subsection (c) or section 8-301(a), even if the acknowledgment violates the rights of a debtor; and

(2) unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) to hold possession of the collateral for the secured party's benefit; or

(2) to redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

Source: Laws 1999, LB 550, § 106; Laws 2005, LB 570, § 108.

9-314 Perfection by control.

(a) A security interest in investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under section 7-106, 9-104, 9-105, 9-106, or 9-107.

(b) A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents is perfected by control under section 7-106, 9-104, 9-105, or 9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under section 9-106 from the time the secured party obtains control and remains perfected by control until:

(1) the secured party does not have control; and

(2) one of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

Source: Laws 1999, LB 550, § 107; Laws 2005, LB 570, § 109.

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.

9-316 Effect of change in governing law.

(a) A security interest perfected pursuant to the law of the jurisdiction designated in section 9-301(1) or 9-305(c) remains perfected until the earliest of:

(1) the time perfection would have ceased under the law of that jurisdiction;
(2) the expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) thereafter the collateral is brought into another jurisdiction; and

(3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under section 9-311(b) or 9-313 are not satisfied before the earlier of:

(1) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) the expiration of four months after the goods had become so covered.

(f) A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) the time the security interest would have become unperfected under the law of that jurisdiction; or

(2) the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes

unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

(1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in section 9-301(1) or 9-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(2) If a security interest perfected by a financing statement that is effective under subdivision (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in section 9-301(1) or 9-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in section 9-301(1) or 9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under section 9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(2) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in section 9-301(1) or 9-305(c) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Source: Laws 1999, LB 550, § 109; Laws 2011, LB90, § 8.

Subpart 3

PRIORITY

9-317 Interests that take priority over or take free of security interest or agricultural lien.

(a) A security interest or agricultural lien is subordinate to the rights of:

(1) a person entitled to priority under section 9-322; and

(2) except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one of the conditions specified in section 9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in sections 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money security interest before or within thirty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

Source: Laws 1999, LB 550, § 110; Laws 2000, LB 929, § 29; Laws 2005, LB 82, § 8; Laws 2005, LB 570, § 110; Laws 2011, LB90, § 9.

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.

9-324 Priority of purchase-money security interests.

(a) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in section 9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within thirty days thereafter.

(b) Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in section 9-330, and, except as otherwise provided in section 9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Subdivisions (b)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under section 9-312(f), before the beginning of the twenty-day period thereunder.

(d)(1) Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in section 9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(A) the purchase-money security interest is perfected when the debtor receives possession of the livestock;

(B) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(C) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(D) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(2) For purposes of this subsection, possession means (A) possession by the debtor or (B) possession by a third party on behalf of or at the direction of the debtor, including, but not limited to, possession by a bailee or an agent of the debtor.

(e) Subdivisions (d)(1)(B) through (D) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) if the purchase-money security interest is temporarily perfected without filing or possession under section 9-312(f), before the beginning of the twenty-day period thereunder.

(f) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in section 9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f):

(1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) in all other cases, section 9-322(a) applies to the qualifying security interests.

Source: Laws 1999, LB 550, § 117; Laws 2005, LB 82, § 9; Laws 2008, LB851, § 27.

9-326 Priority of security interests created by new debtor.

(a) Subject to subsection (b), a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that would be ineffective to perfect the security interest but for the application of section 9-316(i)(1) or 9-508 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement.

(b) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements

described in subsection (a). However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

Source: Laws 1999, LB 550, § 119; Laws 2011, LB90, § 10.

9-338 Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in section 9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

Source: Laws 1999, LB 550, § 131; Laws 2005, LB 570, § 111.

Part 4

RIGHTS OF THIRD PARTIES

9-406 Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

(a) Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subsection (h), notification is ineffective under subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Except as otherwise provided in subsection (e) and sections 2A-303 and 9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under section 9-610 or an acceptance of collateral under section 9-620.

(f) Except as otherwise provided in sections 2A-303 and 9-407, and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to subsection (h), an account debtor may not waive or vary its option under subdivision (b)(3).

(h) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health-care-insurance receivable.

(j) This section prevails over any inconsistent provisions of the law of this state.

Source: Laws 1999, LB 550, § 141; Laws 2000, LB 929, § 34; Laws 2011, LB90, § 11.

9-408 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

(a) Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) would impair the creation, attachment, or perfection of a security interest;
or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under section 9-610 or an acceptance of collateral under section 9-620.

(c) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) would impair the creation, attachment, or perfection of a security interest;
or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) is not enforceable against the person obligated on the promissory note or the account debtor;

(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) This section prevails over any inconsistent provisions of the law of this state.

Source: Laws 1999, LB 550, § 143; Laws 2000, LB 929, § 36; Laws 2011, LB90, § 12.

Part 5

FILING

Subpart 1

FILING OFFICE; CONTENTS AND EFFECTIVENESS
OF FINANCING STATEMENT

9-502 Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.

(a) Subject to subsection (b), a financing statement is sufficient only if it:

(1) provides the name of the debtor;

(2) provides the name of the secured party or a representative of the secured party; and

(3) indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in section 9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

(1) indicate that it covers this type of collateral;

(2) indicate that it is to be filed for record in the real property records;

(3) provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

(4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) the record indicates the goods or accounts that it covers;

(2) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) the record satisfies the requirements for a financing statement in this section, but:

(A) the record need not indicate that it is to be filed in the real property records; and

(B) the record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom section 9-503(a)(4) applies; and

(4) the record is duly recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

Source: Laws 1999, LB 550, § 146; Laws 2011, LB90, § 13.

9-503 Name of debtor and secured party.

(a) A financing statement sufficiently provides the name of the debtor:

(1) except as otherwise provided in subdivision (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name;

(2) subject to subsection (f), if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative;

(3) if the collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) provides, as the name of the debtor:

(i) if the organic record of the trust specifies a name for the trust, the name specified; or

(ii) if the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) in a separate part of the financing statement:

(i) if the name is provided in accordance with subdivision (A)(i), indicates that the collateral is held in a trust; or

(ii) if the name is provided in accordance with subdivision (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(4) subject to subsection (g), if the debtor is an individual to whom the Department of Motor Vehicles has issued a driver's license or state identification card that has not expired, only if the financing statement provides the

name of the individual which is indicated on the driver's license or state identification card;

(5) if the debtor is an individual to whom subdivision (4) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and

(6) in other cases:

(A) if the debtor has a name, only if the financing statement provides the organizational name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(b) A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:

(1) a trade name or other name of the debtor; or

(2) unless required under subdivision (a)(6)(B), names of partners, members, associates, or other persons comprising the debtor.

(c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) A financing statement may provide the name of more than one debtor and the name of more than one secured party.

(f) The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subsection (a)(2).

(g) If the Department of Motor Vehicles has issued to an individual more than one driver's license or state identification card of a kind described in subsection (a)(4), the one that was issued most recently is the one to which subsection (a)(4) refers.

(h) In this section, the "name of the settlor or testator" means:

(1) if the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or restate the settlor's name; or

(2) in other cases, the name of the settlor or testator indicated in the trust's organic record.

Source: Laws 1999, LB 550, § 147; Laws 2011, LB90, § 14; Laws 2012, LB1031, § 1.

9-506 Effect of errors or omissions.

(a) A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9-503(a) is seriously misleading.

(c) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9-503(a), the name provided does not make the financing statement seriously misleading.

(d) For purposes of section 9-508(b), the "debtor's correct name" in subsection (c) means the correct name of the new debtor.

Source: Laws 1999, LB 550, § 150; Laws 2008, LB308A, § 1; Laws 2008, LB851, § 28; Laws 2009, LB87, § 1; Laws 2010, LB751, § 1; Laws 2011, LB90, § 15.

9-507 Effect of certain events on effectiveness of financing statement.

(a) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in subsection (c) and section 9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under section 9-506.

(c) If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under section 9-503(a) so that the financing statement becomes seriously misleading under section 9-506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the filed financing statement becomes seriously misleading; and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the financing statement became seriously misleading.

Source: Laws 1999, LB 550, § 151; Laws 2011, LB90, § 16.

9-510 Effectiveness of filed record.

(a) A filed record is effective only to the extent that it was filed by a person that may file it under section 9-509 or by the filing office under section 9-513A.

(b) A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) A continuation statement that is not filed within the six-month period prescribed by section 9-515(d) is ineffective.

Source: Laws 1999, LB 550, § 154; Laws 2013, LB210, § 3.

9-513A Unauthorized financing statement filings; procedures; remedies.

(a) An individual personally, or as a representative of an organization, may file in the filing office a notarized affidavit, signed under penalty of perjury, that identifies a filed financing statement and states that:

(1) the individual or organization is identified as a debtor in the financing statement;

(2) the financing statement was not filed by a financial institution or a representative of a financial institution or by an agricultural input supplier or a representative of an agricultural input supplier; and

(3) the financing statement was filed by a person not entitled to do so under section 9-509, 9-708, or 9-808.

(b) An affidavit filed under subsection (a) shall include any pertinent information that the office of the Secretary of State may reasonably require.

(c) An affidavit may not be filed under subsection (a) with respect to a financing statement filed by a financial institution or a representative of a financial institution or by an agricultural input supplier or a representative of an agricultural input supplier.

(d) If an affidavit is filed under subsection (a), the filing office may file a termination statement with respect to the financing statement identified in the affidavit. The termination statement must indicate that it was filed pursuant to this section. Except as provided in subsections (g) and (h), a termination statement filed under this subsection shall take effect thirty days after it is filed.

(e) On the same day that the filing office files a termination statement under subsection (d), it shall send to each secured party of record identified in the financing statement a notice advising the secured party of record that the termination statement has been filed. The notice shall be sent by certified mail, return receipt requested, to the mailing address provided for the secured party of record.

(f) A secured party of record identified in a financing statement as to which a termination statement has been filed under subsection (d) may bring an action within twenty business days after the termination statement is filed against the individual who filed the affidavit under subsection (a) seeking a determination as to whether the financing statement was filed by a person entitled to do so under section 9-509, 9-708, or 9-808. An action under this subsection shall have priority on the court's calendar and shall proceed by expedited hearing. The action shall be brought in the district court of the county where the filing office in which the financing statement was filed is located.

(g) In an action brought pursuant to subsection (f), a court may, in appropriate circumstances, order preliminary relief, including, but not limited to, an order precluding the termination statement from taking effect or directing a party to take action to prevent the termination statement from taking effect. If the court issues such an order and the filing office receives a certified copy of the order before the termination statement takes effect, the termination statement shall not take effect and the filing office shall promptly file an amendment to the financing statement that indicates that an order has prevented the termination statement from taking effect. If such an order ceases to be effective by reason of a subsequent order or a final judgment of the court or by an order issued by another court and the filing office receives a certified copy of the subsequent judgment or order, the termination statement shall become immediately effective upon receipt of the certified copy and the filing office shall

promptly file an amendment to the financing statement indicating that the termination statement is effective.

(h) If a court determines in an action brought pursuant to subsection (f) that the financing statement was filed by a person entitled to do so under section 9-509, 9-708, or 9-808 and the filing office receives a certified copy of the court's final judgment or order before the termination statement takes effect, the termination statement shall not take effect and the filing office shall remove the termination statement and any amendments filed under subsection (g) from the files. If the filing office receives the certified copy after the termination statement takes effect and within thirty days after the final judgment or order was entered, the filing office shall promptly file an amendment to the financing statement that indicates that the financing statement has been reinstated.

(i) Except as provided in subsection (j), upon the filing of an amendment reinstating a financing statement under subsection (h) the effectiveness of the financing statement is retroactively reinstated and the financing statement shall be considered never to have been ineffective against all persons and for all purposes.

(j) A financing statement whose effectiveness was terminated under subsection (d) and has been reinstated under subsection (h) shall not be effective as against a person that purchased the collateral in good faith between the time the termination statement was filed and the time of the filing of the amendment reinstating the financing statement, to the extent that the person gave new value in reliance on the termination statement.

(k) The filing office shall not charge a fee for the filing of an affidavit or a termination statement under this section. The filing office shall not return any fee paid for filing the financing statement identified in the affidavit, whether or not the financing statement is subsequently reinstated.

(l) Neither the filing office nor any of its employees shall be subject to liability for the termination or amendment of a financing statement in the lawful performance of the duties of the filing office under this section.

(m) The Secretary of State shall adopt and make available a form of affidavit for use under this section.

(n) For purposes of this section:

(1) Agricultural input supplier means a person regularly in the business of extending credit to agricultural producers; and

(2) Financial institution means a person that is in the business of extending credit or servicing loans, including acquiring, purchasing, selling, brokering, or other extensions of credit and where applicable, holds whatever license, charter, or registration that is required to engage in such business. The term includes banks, savings associations, building and loan associations, consumer and commercial finance companies, industrial banks, industrial loan companies, insurance companies, investment companies, installment sellers, mortgage servicers, sales finance companies, and leasing companies.

Source: Laws 2013, LB210, § 4.

9-515 Duration and effectiveness of financing statement; effect of lapsed financing statement.

(a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed financing statement is effective for a period of five years after the date of filing.

(b) Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of thirty years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) or the thirty-year period specified in subsection (b), whichever is applicable.

(e) Except as otherwise provided in section 9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing under section 9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

Source: Laws 1999, LB 550, § 159; Laws 2011, LB90, § 17.

9-516 What constitutes filing; effectiveness of filing.

(a) Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) the record is not communicated by a method or medium of communication authorized by the filing office;

(2) an amount equal to or greater than the applicable filing fee is not tendered;

(3) the filing office is unable to index the record because:

(A) in the case of an initial financing statement, the record does not provide a name for the debtor;

(B) in the case of an amendment or information statement, the record:

(i) does not identify the initial financing statement as required by section 9-512 or 9-518, as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under section 9-515;

(C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname; or

(D) in the case of a record filed or recorded in the filing office described in section 9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) provide a mailing address for the debtor; or

(B) indicate whether the name provided as the name of the debtor is the name of an individual or an organization;

(6) in the case of an assignment reflected in an initial financing statement under section 9-514(a) or an amendment filed under section 9-514(b), the record does not provide a name and mailing address for the assignee;

(7) in the case of a continuation statement, the record is not filed within the six-month period prescribed by section 9-515(d); or

(8) in the case of a financing statement or an amendment to a financing statement, the same person or entity is listed as both debtor and secured party.

(c) For purposes of subsection (b):

(1) a record does not provide information if the filing office is unable to read or decipher the information; and

(2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 9-512, 9-514, or 9-518, is an initial financing statement.

(d) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

Source: Laws 1999, LB 550, § 160; Laws 2003, LB 494, § 1; Laws 2011, LB90, § 18.

9-518 Claim concerning inaccurate or wrongfully filed record.

(a) A person may file in the filing office an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) An information statement under subsection (a) must:

(1) identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) indicate that it is an information statement; and

(3) provide the basis for the person’s belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person’s belief that the record was wrongfully filed.

(c) A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under section 9-509(d).

(d) An information statement under subsection (c) must:

(1) identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) indicate that it is an information statement; and

(3) provide the basis for the person’s belief that the person that filed the record was not entitled to do so under section 9-509(d).

(e) The filing of an information statement does not affect the effectiveness of an initial financing statement or other filed record.

Source: Laws 1999, LB 550, § 162; Laws 2011, LB90, § 19.

Subpart 2

DUTIES AND OPERATION OF FILING OFFICE

9-521 Uniform form of written financing statement and amendment.

(a) A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in section 9-516(b):

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR

FILING OFFICE USE ONLY

1. DEBTOR’S NAME - provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor’s name)

1a. ORGANIZATION’S NAME

OR

1b. INDIVIDUAL’S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE

SECURED TRANSACTIONS

§ 9-521

PART OF THE NAME OF THIS DEBTOR _____ SUFFIX _____

1c. MAILING ADDRESS _____

CITY _____ STATE _____ POSTAL CODE _____ COUNTRY _____

2. DEBTOR'S NAME - provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

2a. ORGANIZATION'S NAME _____

OR

2b. INDIVIDUAL'S SURNAME _____ FIRST PERSONAL NAME _____

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR _____ SUFFIX _____

2c. MAILING ADDRESS _____

CITY _____ STATE _____ POSTAL CODE _____ COUNTRY _____

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY) - provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME _____

OR

3b. INDIVIDUAL'S SURNAME _____ FIRST PERSONAL NAME _____

ADDITIONAL NAME(S)/INITIAL(S) _____ SUFFIX _____

3c. MAILING ADDRESS _____

CITY _____ STATE _____ POSTAL CODE _____ COUNTRY _____

4. COLLATERAL: This financing statement covers the following collateral:

5. Check only if applicable and check only one box:

Collateral is held in a Trust (see Instructions)
 being administered by a Decedent's Personal Representative.

6a. Check only if applicable and check only one box:

- Public-Finance Transaction
- Manufactured-Home Transaction
- A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

- Agricultural Lien Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): Lessee/Lessor Consignee/Consignor Seller/Buyer Bailee/Bailor Licensee/Li-censor

8. OPTIONAL FILER REFERENCE DATA

 [UCC FINANCING STATEMENT (Form UCC1)]
 UCC FINANCING STATEMENT ADDENDUM
 FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR (same as item 1a or 1b on Financing Statement)

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME

 FIRST PERSONAL NAME

 ADDITIONAL NAME(S)/INITIAL(S)

 SUFFIX

THE ABOVE SPACE IS FOR
 FILING OFFICE USE ONLY

10. ADDITIONAL DEBTOR'S NAME - provide only one Debtor name (10a or 10b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

10a. ORGANIZATION'S NAME

OR

10b. INDIVIDUAL'S SURNAME

 FIRST PERSONAL NAME

 ADDITIONAL NAME(S)/INITIAL(S) THAT ARE
 PART OF THE NAME OF THIS DEBTOR

 SUFFIX

10c. MAILING ADDRESS

 CITY

 STATE

 POSTAL CODE

 COUNTRY

11. ____ ADDITIONAL SECURED PARTY'S NAME or ____ ASSIGNOR
 SECURED PARTY'S NAME - provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S SURNAME

 FIRST PERSONAL NAME

 ADDITIONAL NAME(S)/INITIAL(S)

 SUFFIX

11c. MAILING ADDRESS

 CITY

 STATE

 POSTAL CODE

 COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral)

13. ____ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT:

____ covers timber to be cut

____ covers as-extracted collateral

____ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

17. MISCELLANEOUS:

[UCC FINANCING STATEMENT ADDENDUM (Form UCC1Ad)]

(b) A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in section 9-516(b):

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR

FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE NUMBER

1b. ____ This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS.

Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13.

2. ____ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of Secured Party authorizing this Termination Statement

3. ____ ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9. For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

4. ____ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

5. PARTY INFORMATION CHANGE:

Check one of these two boxes:

This Change affects Debtor or Secured Party of record.

AND

Check one of these three boxes to:

CHANGE name and/or address: Complete item 6a or 6b, and item 7a or 7b and item 7c.

ADD name: Complete item 7a or 7b, and item 7c.

DELETE name: Give record name to be deleted in item 6a or 6b.

6. CURRENT RECORD INFORMATION: Complete for Party Information Change - provide only one name (6a or 6b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change - provide only one name (7a or 7b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR

SUFFIX

7c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

8. COLLATERAL CHANGE:

Also check one of these four boxes:

ADD collateral DELETE collateral RESTATE covered collateral ASSIGN collateral

Indicate collateral:

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT - provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)

If this is an Amendment authorized by a DEBTOR, check here and provide name of authorizing Debtor

9a. ORGANIZATION'S NAME

OR

9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

10. OPTIONAL FILER REFERENCE DATA

[UCC FINANCING STATEMENT AMENDMENT (Form UCC3)]
 UCC FINANCING STATEMENT AMENDMENT ADDENDUM
 FOLLOW INSTRUCTIONS

11. INITIAL FINANCING STATEMENT FILE NUMBER (same as item 1a on Amendment form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

**THE ABOVE SPACE IS FOR
 FILING OFFICE USE ONLY**

13. Name of DEBTOR on related financing statement (Name of a current Debtor of record required for indexing purposes only in some filing offices - see Instruction for item 13 - insert only one Debtor name (13a or 13b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor's name)

13a. ORGANIZATION'S NAME

OR

13b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

14. ADDITIONAL SPACE FOR ITEM 8 (Collateral)

15. This FINANCING STATEMENT AMENDMENT: ____ covers timber to be cut ____ covers as-extracted collateral ____ is filed as a fixture filing

16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):

17. Description of real estate

18. MISCELLANEOUS:

[UCC FINANCING STATEMENT AMENDMENT ADDENDUM (Form UCC3Ad)]

Source: Laws 2011, LB90, § 20.

Note: This section was repealed by Laws 2011, LB90, section 33. Laws 2011, LB90, section 20, added a new section 9-521.

9-522 Maintenance and destruction of records.

(a) The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under section 9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a).

(c) Notwithstanding the provisions of this section, a record of a financing statement or amendment statement for which the place of filing was changed by Laws 1998, LB 1321, and which financing statement or amendment statement could have been continued or was continued by filing a new continuation statement pursuant to Laws 1998, LB 1321, section 110, does not have to be retained by the original filing office and may be disposed of or destroyed.

Source: Laws 1999, LB 550, § 166; Laws 2005, LB 451, § 2.

9-523 Information from filing office; sale or license of records.

(a) If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to section 9-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) note upon the copy the number assigned to the record pursuant to section 9-519(a)(1) and the date and time of the filing of the record; and

(2) send the copy to the person.

(b) If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) the information in the record;

(2) the number assigned to the record pursuant to section 9-519(a)(1); and

(3) the date and time of the filing of the record.

(c) The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

(A) designates a particular debtor;

(B) has not lapsed under section 9-515 with respect to all secured parties of record; and

(C) if the request so states, has lapsed under section 9-515 and a record of which is maintained by the filing office under section 9-522(a);

(2) the date and time of filing of each financing statement; and

(3) the information provided in each financing statement.

(d) In complying with its duty under subsection (c), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing its written certificate.

(e) The filing office shall perform the acts required by subsections (a) through (d) at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

(f)(1) The Secretary of State shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in the office of the Secretary of State under this part, in every medium from time to time available to the filing office.

(2) Records filed in the office of the Secretary of State under this part may be made available electronically through the portal established under section 84-1204, Reissue Revised Statutes of Nebraska. For batch requests, the fee is two dollars per record accessed through the portal, except that the fee for a batch request for one thousand or more records is two thousand dollars. All fees collected pursuant to this subdivision shall be deposited in the Records Management Cash Fund and shall be distributed as provided in any agreements between the State Records Board and the Secretary of State.

Source: Laws 1999, LB 550, § 167; Laws 2012, LB719, § 31.

9-525 Fees.

(a) The fee for filing and indexing a record under this part is:

(1) Except as provided in subdivision (a)(4) of this section, ten dollars if the record is communicated in writing and consists of one page;

(2) Except as provided in subdivision (a)(4) of this section, ten dollars plus fifty cents per page for the second page and for each additional page if the record is communicated in writing and consists of more than one page;

(3) Except as provided in subdivision (a)(4) of this section, eight dollars if the record is communicated by another medium authorized by filing-office rule; and

(4) Seventy-five dollars, plus fifty cents per page for the second and each subsequent page of the filing, if the debtor is a transmitting utility and the filing so indicates.

(b) The number of names required to be indexed does not affect the amount of the fee in subsection (a).

(c) There is no fee for the filing of a termination statement.

(d)(1) The fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor, is four dollars and fifty cents.

(2) Of the fees received pursuant to this subsection by the Secretary of State, one dollar of each fee shall be remitted to the State Treasurer for credit to the Records Management Cash Fund.

Source: Laws 1999, LB 550, § 169; Laws 2004, LB 1099, § 3.

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.

9-530 Filing information; Secretary of State; duties.

(a) Upon receipt of a financing statement relating to any collateral except collateral described in section 9-501(a)(1), the Secretary of State shall on the day of receipt enter into the centralized computer system the following document information:

(1) Identification of the document and the fact that the original document was filed with the Secretary of State;

(2) Document number;

(3) Name and address of the obligor or obligors;

(4) Name and address of the secured party or secured parties;

(5) Type or types of goods or property covered; and

(6) Date and time of filing.

(b)(1) Upon receipt of a notice of lien upon real property or a certificate or a notice affecting the lien presented for filing pursuant to the Uniform Federal Lien Registration Act or a notice of lien upon real property, release, continuation, subordination, or termination presented for filing pursuant to the Uniform State Tax Lien Registration and Enforcement Act, the Secretary of State shall on the date of receipt enter into the centralized computer system the following document information:

(i) Identification of the document and any county designated as a county in which the real property is situated;

(ii) Document number;

(iii) Type or types of property covered; and

(iv) The information entered pursuant to section 52-1003 or 77-3903, Reissue Revised Statutes of Nebraska.

(2) Upon receipt of a notice of lien upon personal property or a certificate or a notice affecting the lien filed pursuant to the Uniform Federal Lien Registration Act or a notice of lien upon personal property, release, continuation, subordination, or termination filed pursuant to the Uniform State Tax Lien Registration and Enforcement Act, the Secretary of State shall on the date of receipt enter into the centralized computer system the following document information:

(i) Identification of the document;

(ii) Document number;

(iii) Type or types of property covered; and

(iv) The information entered pursuant to section 52-1003 or 77-3903, Reissue Revised Statutes of Nebraska.

(c) The Secretary of State shall maintain the information received under subsections (a) and (b) of this section so that such information shall be available for the following types of inquiry: In person, written, and electronic media, including computers.

Source: Laws 1999, LB 550, § 174; Laws 2001, LB 54, § 30; Laws 2012, LB853, § 1.

Cross References

Uniform Federal Lien Registration Act, see section 52-1007.

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

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, the Election Administration 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; Laws 2011, LB378, § 35.

Part 6

DEFAULT

Subpart 1

DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

9-601 Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(a) After default, a secured party has the rights provided in this part and, except as otherwise provided in section 9-602, those provided by agreement of the parties. A secured party:

(1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under section 7-106, 9-104, 9-105, 9-106, or 9-107 has the rights and duties provided in section 9-207.

(c) The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) and section 9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) the date of perfection of the security interest or agricultural lien in the collateral;

(2) the date of filing a financing statement covering the collateral; or

(3) any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

(g) Except as otherwise provided in section 9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

Source: Laws 1999, LB 550, § 176; Laws 2005, LB 570, § 112.

9-607 Collection and enforcement by secured party.

(a) If so agreed, and in any event after default, a secured party:

(1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) may take any proceeds to which the secured party is entitled under section 9-315;

(3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) if it holds a security interest in a deposit account perfected by control under section 9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) if it holds a security interest in a deposit account perfected by control under section 9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) If necessary to enable a secured party to exercise under subdivision (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) the secured party's sworn affidavit in recordable form stating that:

(A) a default has occurred with respect to the obligation secured by the mortgage; and

(B) the secured party is entitled to enforce the mortgage nonjudicially.

(c) A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

Source: Laws 1999, LB 550, § 182; Laws 2011, LB90, § 21.

Part 7

TRANSITION

9-705 Effectiveness of action taken before July 1, 2001.

(a) If action, other than the filing of a financing statement, is taken before July 1, 2001, and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before July 1, 2001, the action is effective to perfect a security interest that attaches under this article within one year after July 1, 2001. An attached security interest becomes unperfected one year after July 1, 2001, unless the security interest becomes a perfected security interest under this article before the expiration of that period.

(b) The filing of a financing statement before July 1, 2001, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this article.

(c) This article does not render ineffective an effective financing statement that, before July 1, 2001, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in section 9-103, as such section existed immediately before July 1, 2001. However, except as otherwise provided in subsections (d), (e), and (f) and section 9-706, the financing statement ceases to be effective at the earlier of:

(1) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) The filing of a continuation statement on or after July 1, 2001, does not continue the effectiveness of the financing statement filed before July 1, 2001. However, upon the timely filing of a continuation statement on or after July 1, 2001, and in accordance with the law of the jurisdiction governing perfection as provided in part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2001, continues for the period provided by the law of that jurisdiction.

(e) Subdivision (c)(2) applies to a financing statement that, before July 1, 2001, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in section 9-103, as such section existed immediately before July 1, 2001, only to the extent that part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) Subdivision (c)(2) does not apply to a financing statement that was filed in the proper place in the state before July 1, 2001, pursuant to section 9-401, as such section existed immediately before July 1, 2001, and for which the proper place of filing in the state was not changed pursuant to section 9-501, as such section existed on July 1, 2001.

(g) A financing statement that includes a financing statement filed before July 1, 2001, and a continuation statement filed on or after July 1, 2001, is effective only to the extent that it satisfies the requirements of part 5 for an initial financing statement.

Source: Laws 1999, LB 550, § 208; Laws 2000, LB 929, § 46; Laws 2006, LB 876, § 56.

9-707 Amendment of pre-operative-date financing statement.

(a) In this section, “pre-operative-date financing statement” means a financing statement filed before July 1, 2001.

(b) On or after July 1, 2001, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-operative-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in part 3. However, the effectiveness of a pre-operative-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d), if the law of this state governs perfection of a security interest, the information in a pre-operative-date financing statement may be amended on or after July 1, 2001, only if:

(1) the pre-operative-date financing statement and an amendment are filed in the office specified in section 9-501;

(2) an amendment is filed in the office specified in section 9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 9-706(c); or

(3) an initial financing statement that provides the information as amended and satisfies section 9-706(c) is filed in the office specified in section 9-501.

(d) If the law of this state governs perfection of a security interest, the effectiveness of a pre-operative-date financing statement may be continued only under section 9-705(d) and (g) or 9-706.

(e) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-operative-date financing statement filed in this state may be terminated on or after July 1, 2001, by filing a termination statement in the office in which the pre-operative-date financing statement is filed, unless an initial financing statement that satisfies section 9-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in part 3 as the office in which to file a financing statement.

Source: Laws 2000, LB 929, § 47; Laws 2006, LB 876, § 57.

Part 8

TRANSITION PROVISIONS FOR 2011 AMENDMENTS

9-801 Operative date.

This article as amended by Laws 2011, LB90, becomes operative on July 1, 2013.

Source: Laws 2011, LB90, § 22.

9-802 Savings clause.

(a) Except as otherwise provided in this part, this article applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before July 1, 2013.

(b) This article as amended by Laws 2011, LB90, does not affect an action, case, or proceeding commenced before July 1, 2013.

Source: Laws 2011, LB90, § 23.

9-803 Security interest perfected before July 1, 2013.

(a) A security interest that is a perfected security interest immediately before July 1, 2013, is a perfected security interest under this article as it existed on July 1, 2013, if, on July 1, 2013, the applicable requirements for attachment and perfection under this article as it existed on July 1, 2013, are satisfied without further action.

(b) Except as otherwise provided in section 9-805, if, immediately before July 1, 2013, a security interest is a perfected security interest, but the applicable requirements for perfection under this article as it existed on July 1, 2013, are

not satisfied on July 1, 2013, the security interest remains perfected thereafter only if the applicable requirements for perfection under this article as it existed on July 1, 2013, are satisfied within one year after July 1, 2013.

Source: Laws 2011, LB90, § 24.

9-804 Security interest unperfected before July 1, 2013.

A security interest that is an unperfected security interest immediately before July 1, 2013, becomes a perfected security interest:

(1) without further action, on July 1, 2013, if the applicable requirements for perfection under this article as it existed on July 1, 2013, are satisfied before or at that time; or

(2) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

Source: Laws 2011, LB90, § 25.

9-805 Effectiveness of action taken before July 1, 2013.

(a) The filing of a financing statement before July 1, 2013, is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this article as it existed on July 1, 2013.

(b) This article does not render ineffective an effective financing statement that, before July 1, 2013, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this article as it existed before July 1, 2013. However, except as otherwise provided in subsections (c) and (d) and section 9-806, the financing statement ceases to be effective:

(1) if the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had Laws 2011, LB90, not become law; or

(2) if the financing statement is filed in another jurisdiction, at the earlier of:

(A) the time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.

(c) The filing of a continuation statement on or after July 1, 2013, does not continue the effectiveness of the financing statement filed before July 1, 2013. However, upon the timely filing of a continuation statement on or after July 1, 2013, and in accordance with the law of the jurisdiction governing perfection as provided in this article as it existed on July 1, 2013, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2013, continues for the period provided by the law of that jurisdiction.

(d) Subsection (b)(2)(B) applies to a financing statement that, before July 1, 2013, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this article as it existed before July 1, 2013, only to the extent that this article as it existed on July 1, 2013, provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) A financing statement that includes a financing statement filed before July 1, 2013, and a continuation statement filed on or after July 1, 2013, is effective

only to the extent that it satisfies the requirements of part 5 as it existed on July 1, 2013, for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of section 9-503(a)(2) as it existed on July 1, 2013. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of section 9-503(a)(3) as it existed on July 1, 2013.

Source: Laws 2011, LB90, § 26.

9-806 When initial financing statement suffices to continue effectiveness of financing statement.

(a) The filing of an initial financing statement in the office specified in section 9-501 continues the effectiveness of a financing statement filed before July 1, 2013, if:

(1) the filing of an initial financing statement in that office would be effective to perfect a security interest under this article as it existed on July 1, 2013;

(2) the pre-operative-date financing statement was filed in an office in another state; and

(3) the initial financing statement satisfies subsection (c).

(b) The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-operative-date financing statement:

(1) if the initial financing statement is filed before July 1, 2013, for the period provided in section 9-515 as it existed before July 1, 2013, with respect to an initial financing statement; and

(2) if the initial financing statement is filed on or after July 1, 2013, for the period provided in section 9-515 as it existed on July 1, 2013, with respect to an initial financing statement.

(c) To be effective for purposes of subsection (a), an initial financing statement must:

(1) satisfy the requirements of part 5 as it existed on July 1, 2013, for an initial financing statement;

(2) identify the pre-operative-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) indicate that the pre-operative-date financing statement remains effective.

Source: Laws 2011, LB90, § 27.

9-807 Amendment of pre-operative-date financing statement.

(a) In this section, "pre-operative-date financing statement" means a financing statement filed before July 1, 2013.

(b) On or after July 1, 2013, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-operative-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in this article as it existed on July 1, 2013. However, the effectiveness of a pre-operative-date

financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d), if the law of this state governs perfection of a security interest, the information in a pre-operative-date financing statement may be amended on or after July 1, 2013, only if:

(1) the pre-operative-date financing statement and an amendment are filed in the office specified in section 9-501;

(2) an amendment is filed in the office specified in section 9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 9-806(c); or

(3) an initial financing statement that provides the information as amended and satisfies section 9-806(c) is filed in the office specified in section 9-501.

(d) If the law of this state governs perfection of a security interest, the effectiveness of a pre-operative-date financing statement may be continued only under section 9-805(c) and (e) or 9-806.

(e) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-operative-date financing statement filed in this state may be terminated on or after July 1, 2013, by filing a termination statement in the office in which the pre-operative-date financing statement is filed, unless an initial financing statement that satisfies section 9-806(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in this article as it existed on July 1, 2013, as the office in which to file a financing statement.

Source: Laws 2011, LB90, § 28.

9-808 Person entitled to file initial financing statement or continuation statement.

A person may file an initial financing statement or a continuation statement under this part if:

(1) the secured party of record authorizes the filing; and

(2) the filing is necessary under this part:

(A) to continue the effectiveness of a financing statement filed before July 1, 2013; or

(B) to perfect or continue the perfection of a security interest.

Source: Laws 2011, LB90, § 29.

9-809 Priority.

This article determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2013, this article as it existed before July 1, 2013, determines priority.

Source: Laws 2011, LB90, § 30.

ARTICLE 10

EFFECTIVE DATE AND REPEALER

Section

10-104. Repealed. Laws 2005, LB 570, § 116.

10-104 Repealed. Laws 2005, LB 570, § 116.



APPENDIX

CLASSIFICATION OF PENALTIES

CLASS I FELONY

Death

28-303 Murder in the first degree

CLASS IA FELONY

Life imprisonment (persons 18 years old or older)

Maximum for persons under 18 years old—life imprisonment

Minimum for persons under 18 years old—forty years' imprisonment

28-202 Criminal conspiracy to commit a Class IA felony
 28-303 Murder in the first degree
 28-313 Kidnapping
 28-391 Murder of an unborn child in the first degree
 28-1223 Using explosives to damage or destroy property resulting in death
 28-1224 Using explosives to kill or injure any person resulting in death

CLASS IB FELONY

Maximum—life imprisonment

Minimum—twenty years' imprisonment

28-111 Sexual assault of a child in the first degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
 28-111 Sexual assault of a child in the second or third degree, with prior sexual assault convictions, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
 28-115 Sexual assault of a child in the second or third degree with prior sexual assault conviction committed against a pregnant woman
 28-115 Sexual assault of a child in the first degree committed against a pregnant woman
 28-202 Criminal conspiracy to commit a Class IB felony
 28-304 Murder in the second degree
 *28-319.01 Sexual assault of a child in the first degree
 *28-319.01 Sexual assault of a child in the first degree with prior sexual assault conviction
 28-392 Murder of an unborn child in the second degree
 *28-416 Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense amphetamine or methamphetamine in a quantity of 140 grams or more
 *28-416 Offenses relating to amphetamine or methamphetamine in a quantity of at least 10 grams but less than 28 grams, second or subsequent offense involving minors or near youth facilities
 *28-416 Offenses relating to amphetamine or methamphetamine in a quantity of

APPENDIX

CLASS IB FELONY

- 28 grams or more involving minors or near youth facilities
- *28-416 Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of amphetamine or methamphetamine in a quantity of at least 28 grams
- *28-416 Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense cocaine or any mixture containing cocaine, or base cocaine (crack) or any mixture containing base cocaine, in a quantity of 140 grams or more
- *28-416 Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense heroin or any mixture containing heroin in a quantity of 140 grams or more
- *28-416 Offenses relating to cocaine or base cocaine (crack) in a quantity of 28 grams or more involving minors or near youth facilities
- *28-416 Offenses relating to cocaine or base cocaine (crack) in a quantity of at least 10 grams but less than 28 grams, second or subsequent offense involving minors or near youth facilities
- *28-416 Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of cocaine or any mixture containing cocaine, or base cocaine (crack) or any mixture containing base cocaine, in a quantity of 28 grams or more
- *28-416 Offenses relating to heroin in a quantity of 28 grams or more involving minors or near youth facilities
- *28-416 Offenses relating to heroin in a quantity of at least 10 grams but less than 28 grams, second or subsequent offense involving minors or near youth facilities
- *28-416 Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of heroin or any mixture containing heroin in a quantity of at least 28 grams
- 28-457 Permitting a child or vulnerable adult to inhale, have contact with, or ingest methamphetamine resulting in death
- 28-707 Child abuse committed knowingly and intentionally and resulting in death
- 28-1206 Possession of a firearm by a prohibited person, second or subsequent offense
- *28-1356 Obtaining a real property interest or establishing or operating an enterprise by means of racketeering activity punishable as a Class I, IA, or IB felony

***Sections noted with an asterisk have additional penalty provisions**

CLASS IC FELONY

Maximum—fifty years' imprisonment

Mandatory minimum—five years' imprisonment

- 28-202 Criminal conspiracy to commit a Class IC felony
- *28-320.01 Sexual assault of a child in the second degree with prior sexual assault conviction
- 28-320.01 Sexual assault of a child in the third degree with prior sexual assault

APPENDIX

CLASS IC FELONY

	conviction
28-320.02	Sexual assault of minor or person believed to be a minor lured by electronic communication device, second offense or with previous conviction of sexual assault
*28-416	Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense cocaine or any mixture containing cocaine, or base cocaine (crack) or any mixture containing base cocaine, in a quantity of at least 28 grams but less than 140 grams
*28-416	Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense heroin or any mixture containing heroin in a quantity of at least 28 grams but less than 140 grams
*28-416	Offenses relating to cocaine or base cocaine (crack) in a quantity of at least 10 grams but less than 28 grams, first offense involving minors or near youth facilities
*28-416	Offenses relating to heroin in a quantity of at least 10 grams but less than 28 grams, first offense involving minors or near youth facilities
*28-416	Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of cocaine or any mixture containing cocaine, or base cocaine (crack) or any mixture containing base cocaine, in a quantity of at least 10 grams but less than 28 grams
*28-416	Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of heroin or any mixture containing heroin in a quantity of at least 10 grams but less than 28 grams
*28-416	Manufacture, distribute, deliver, dispense, or possess exceptionally hazardous drug in Schedule I, II, or III of section 28-405, second or subsequent offense involving minors or near youth facilities
*28-416	Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense amphetamine or methamphetamine in a quantity of at least 28 grams but less than 140 grams
*28-416	Offenses relating to amphetamine or methamphetamine in a quantity of at least 10 grams but less than 28 grams, first offense involving minors or near youth facilities
*28-416	Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of amphetamine or methamphetamine in a quantity of at least 10 grams but less than 28 grams
28-813.01	Possession of visual depiction of sexually explicit conduct containing a child by a person with previous conviction
28-1205	Use of firearm to commit a felony
28-1212.04	Discharge of firearm within certain cities or counties from vehicle or proximity of vehicle at a person, structure, vehicle, or aircraft
28-1463.04	Child pornography by person with previous conviction
28-1463.05	Possession of child pornography with intent to distribute by person with previous conviction

APPENDIX

CLASS IC FELONY

*Sections noted with an asterisk have additional penalty provisions

CLASS ID FELONY

Maximum—fifty years' imprisonment

Mandatory minimum—three years' imprisonment

- | | |
|-----------|---|
| 28-111 | Kidnapping (certain situations) committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person |
| 28-111 | Sexual assault in the first degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person |
| 28-111 | Arson in the first degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person |
| 28-111 | Sexual assault of a child in the second degree, first offense, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person |
| 28-115 | Sexual assault in the first degree committed against a pregnant woman |
| 28-115 | Sexual assault of a child in the second degree, first offense, committed against a pregnant woman |
| 28-115 | Domestic assault in the first degree, second or subsequent offense against same intimate partner, committed against a pregnant woman |
| 28-115 | Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree committed against a pregnant woman |
| 28-115 | Certain acts of assault, terroristic threats, kidnapping, or false imprisonment committed by legally confined person against a pregnant woman |
| 28-202 | Criminal conspiracy to commit a Class ID felony |
| 28-320.02 | Sexual assault of minor or person believed to be a minor lured by electronic communication device, first offense |
| *28-416 | Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense cocaine or any mixture containing cocaine, or base cocaine (crack) or any mixture containing base cocaine, in a quantity of at least 10 grams but less than 28 grams |
| *28-416 | Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense heroin or any mixture containing heroin in a quantity of at least 10 grams but less than 28 grams |
| *28-416 | Knowingly or intentionally manufacturing, distributing, delivering, dispensing, or possessing with intent to manufacture, distribute, deliver, or dispense amphetamine or methamphetamine in a quantity of at least 10 grams but less than 28 grams |

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CLASS ID FELONY

- *28-416 Manufacture, distribute, deliver, dispense, or possess exceptionally hazardous drug in Schedule I, II, or III of section 28-405, first offense involving minors or near youth facilities
- *28-416 Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of an exceptionally hazardous drug in Schedule I, II, or III of section 28-405
- *28-416 Manufacture, distribute, deliver, dispense, or possess certain controlled substances in Schedule I, II, or III of section 28-405, second or subsequent offense involving minors or near youth facilities
- 28-929 Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the first degree
- 28-1206 Possession of a firearm by a prohibited person, first offense
- 28-1212.02 Unlawful discharge of firearm at an occupied building, vehicle, or aircraft
- 28-1463.04 Child pornography by person 19 years old or older

***Sections noted with an asterisk have additional penalty provisions**

CLASS II FELONY

Maximum—fifty years' imprisonment

Minimum—one year imprisonment

- 28-111 Manslaughter committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 Assault in the first degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 Sexual assault in the second degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 Arson in the second degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-115 Assault in the first degree committed against a pregnant woman
- 28-115 Sexual assault in the second degree committed against a pregnant woman
- 28-115 Sexual abuse of an inmate or parolee in the first degree committed against a pregnant woman
- 28-115 Sexual abuse of a protected individual, first degree, committed against a pregnant woman
- 28-115 Domestic assault in the first degree, first offense, committed against a pregnant woman
- 28-115 Domestic assault in the second degree, second or subsequent offense against same intimate partner, committed against a pregnant woman
- 28-115 Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a

APPENDIX

CLASS II FELONY

	health care professional in the second degree committed against a pregnant woman
28-201	Criminal attempt to commit a Class I, IA, IB, IC, or ID felony
28-202	Criminal conspiracy to commit a Class I or II felony
*28-306	Motor vehicle homicide by person driving under the influence of alcohol or drugs with prior conviction of driving under the influence of alcohol or drugs
28-308	Assault in the first degree
28-313	Kidnapping (certain situations)
*28-319	Sexual assault in the first degree
28-320.01	Sexual assault of a child in the second degree, first offense
28-323	Domestic assault in the first degree, second or subsequent offense
28-324	Robbery
*28-416	Manufacture, distribute, deliver, dispense, or possess exceptionally hazardous drug in Schedule I, II, or III of section 28-405
*28-416	Manufacture, distribute, deliver, dispense, or possess certain controlled substances in Schedule I, II, or III of section 28-405, first offense involving minors or near youth facilities
*28-416	Manufacture, distribute, deliver, dispense, or possess controlled substances in Schedule IV or V of section 28-405, second or subsequent offense involving minors or near youth facilities
*28-416	Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of certain controlled substances in Schedule I, II, or III of section 28-405
28-502	Arson in the first degree
28-638	Criminal impersonation by falsely representing business or engaging in profession, business, or occupation without license if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$1,500 or more, second or subsequent offense
28-638	Criminal impersonation by providing false identification information to court or law enforcement officer, third or subsequent offense
28-639	Identity theft if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$1,500 or more, second or subsequent offense
28-707	Child abuse committed knowingly and intentionally and resulting in serious bodily injury
28-831	Labor trafficking or sex trafficking of a minor by use of force or threat of force or when minor is under 15 years old
28-930	Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the second degree
28-932	Assault with a deadly or dangerous weapon by a legally confined person committed against a pregnant woman
28-933	Certain acts of assault, terroristic threats, kidnapping, or false imprisonment committed by legally confined person
28-1205	Possession of firearm during commission of a felony
28-1205	Use of deadly weapon other than a firearm to commit a felony
28-1222	Using explosives to commit a felony, second or subsequent offense
28-1223	Using explosives to damage or destroy property resulting in personal

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CLASS II FELONY

- injury
- 28-1224 Using explosives to kill or injure any person resulting in personal injury
- 30-3432 Sign or alter without authority or alter, forge, conceal, or destroy a power of attorney for health care or conceal or destroy a revocation with the intent and effect of withholding or withdrawing life-sustaining procedures or nutrition or hydration
- 60-690 Aiding or abetting a violation of the Nebraska Rules of the Road
- *60-6,197.03 Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug or refusing chemical test, fifth or subsequent offense committed with .15 gram alcohol concentration
- 70-2105 Destroy, damage, or cause loss to nuclear electrical generating facility or steal or render nuclear fuel unusable or unsafe

***Sections noted with an asterisk have additional penalty provisions**

CLASS III FELONY

Maximum—twenty years' imprisonment, or twenty-five thousand dollars fine, or both

Minimum—one year imprisonment

- 8-138 Officer, agent, or employee receiving deposits on behalf of insolvent bank
- 8-139 Acting or assisting another to act as active executive officer of a bank when not licensed
- 8-175 Banks, false entry or statements, offenses relating to records
- 8-224.01 Substitution or investment of estate or trust assets for or in securities of the trust company controlling the estate or trust; loans of trust company assets to trust company officials or employees
- 9-814 Altering lottery tickets to defraud under the State Lottery Act
- 24-216 Clerk of the Supreme Court intentionally making a false report under oath, perjury
- 25-2310 Fraudulently invoking privilege of proceeding in forma pauperis
- 28-107 Felony defined outside of criminal code
- 28-111 Assault in the second degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 False imprisonment in the first degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 Sexual assault of a child in the third degree, first offense, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-115 Assault in the second degree committed against a pregnant woman
- 28-115 Sexual assault of a child in the third degree, first offense, committed against a pregnant woman
- 28-115 Domestic assault in the second degree, first offense, committed against a pregnant woman

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CLASS III FELONY

28-115	Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree committed against a pregnant woman
28-115	Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle committed against a pregnant woman
*28-115	Causing serious bodily injury to pregnant woman while driving while intoxicated
28-201	Criminal attempt to commit a Class II felony
28-202	Criminal conspiracy to commit a Class III felony
28-204	Harboring, concealing, or aiding a felon who committed a Class I, IA, IB, IC, or ID felony
28-305	Manslaughter
*28-306	Motor vehicle homicide by person driving under the influence of alcohol or drugs with no prior conviction
28-309	Assault in the second degree
28-310.01	Strangulation using dangerous instrument, resulting in serious bodily injury, or after previous conviction for strangulation
28-311	Criminal child enticement with previous conviction of certain crimes
*28-311.08	Distributing or making public a recording of another without his or her consent or knowledge when in a state of undress in a place of solitude or seclusion or when the recording shows another's intimate area
28-320	Sexual assault in the second degree
28-322.02	Sexual abuse of an inmate or parolee in the first degree
28-322.04	Sexual abuse of a protected individual in the first degree
28-323	Domestic assault in the first degree, first offense
28-323	Domestic assault in the second degree, second or subsequent offense
28-328	Performance of partial-birth abortion
28-342	Sale, transfer, distribution, or giving away of live or viable aborted child or consenting to, aiding, or abetting the same
28-393	Manslaughter of an unborn child
*28-394	Motor vehicle homicide of an unborn child by person driving under the influence of alcohol or drugs with prior conviction of driving under the influence of alcohol or drugs
28-397	Assault of an unborn child in the first degree
*28-416	Manufacture, distribute, deliver, dispense, or possess certain controlled substances in Schedule I, II, or III of section 28-405
*28-416	Manufacture, distribute, deliver, dispense, or possess controlled substances in Schedule IV or V of section 28-405, first offense involving minors or near youth facilities
*28-416	Possessing a firearm while violating prohibition on the manufacture, distribution, delivery, dispensing, or possession of controlled substances in Schedule IV or V of section 28-405
28-503	Arson in the second degree
28-507	Burglary
28-518	Theft when value is over \$1,500
28-602	Forgery in the first degree

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CLASS III FELONY

28-603	Forgery in the second degree when face value is \$1,000 or more
28-611	Issuing a bad check or other order in an amount of \$1,500 or more
28-611.01	Issuing a no-account check in an amount of \$1,500 or more, first offense
28-611.01	Issuing a no-account check in an amount of \$500 or more, second or subsequent offense
28-620	Unauthorized use of a financial transaction device when total value is \$1,500 or more within a six-month period
28-621	Criminal possession of four or more financial transaction devices
28-622	Unlawful circulation of a financial transaction device in the first degree
28-625	Criminal sale of two or more blank financial transaction devices
28-627	Unlawful manufacture of a financial transaction device
28-631	Committing a fraudulent insurance act when the amount involved is \$1,500 or more
28-638	Criminal impersonation by falsely representing business or engaging in profession, business, or occupation without license if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$1,500 or more, first offense
28-638	Criminal impersonation by falsely representing business or engaging in profession, business, or occupation without license if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$500 or more but less than \$1,500, second or subsequent offense
28-638	Criminal impersonation by providing false identification information to court or law enforcement officer, second offense
28-639	Identity theft if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$1,500 or more, first offense
28-639	Identity theft if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$500 or more but less than \$1,500, second or subsequent offense
28-703	Incest
28-707	Child abuse committed negligently resulting in death
28-802	Pandering involving victim at least 18 years old, first offense
28-802	Pandering involving victim of any age, second or subsequent offense
28-813.01	Possession by a person 19 years old or older of visual depiction of sexually explicit conduct containing a child
28-831	Labor trafficking or sex trafficking resulting from inflicting or threatening serious personal injury or restraining or threatening restraint of another
28-831	Labor trafficking or sex trafficking of a minor without use of force or threat of force when minor is between 15 and 18 years old
28-912	Escape when detained or under arrest on a felony charge
28-912	Escape using force, threat, deadly weapon, or dangerous instrument
28-912	Escape, public servant concerned in detention permits another to escape
28-915	Perjury and subornation of perjury
28-932	Assault with a deadly or dangerous weapon by a legally confined person
28-932	Assault by legally confined person without a deadly weapon committed against a pregnant woman
28-1102	Promoting gambling in the first degree, third or subsequent offense

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CLASS III FELONY

28-1105.01	Gambling debt collection
28-1204.01	Unlawful transfer of a firearm to a juvenile
28-1205	Possession of deadly weapon other than a firearm during commission of a felony
28-1206	Possession of deadly weapon other than a firearm by a prohibited person
28-1207	Possession of a defaced firearm
28-1208	Defacing a firearm
28-1212.03	Possession, receipt, retention, or disposal of a stolen firearm knowing or believing it to be stolen
28-1222	Using explosives to commit a felony, first offense
28-1223	Using explosives to damage or destroy property unless personal injury or death occurs
28-1224	Using explosives to kill or injure any person unless personal injury or death occurs
28-1344	Unauthorized access to a computer which deprives another of property or services or obtains property or services of another with value of \$1,000 or more
28-1345	Unauthorized access to a computer which causes damages of \$1,000 or more
*28-1356	Obtaining a real property interest or establishing or operating an enterprise by means of racketeering activity or unlawful debt collection
28-1423	Swearing falsely regarding sales of tobacco
28-1463.04	Child pornography by person under 19 years old
28-1463.05	Possession of child pornography with intent to distribute by person 19 years old or older
*29-4011	Failure by felony sex offender to register under the Sex Offender Registration Act, second or subsequent offense
30-2219	Falsifying representation under the Uniform Probate Code
30-24,125	False statement regarding personal property of decedent
30-24,129	False statement regarding real property of decedent
32-1514	Forging candidate filing form for election nomination
32-1516	Forging initials or signatures on official ballots or falsifying, destroying, or suppressing candidate filing forms
32-1517	Employer penalizing employee for serving as election official
32-1522	Unlawful distribution of ballots or other election supplies by election official, printer, or custodian of supplies
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
44-10,108	Fraudulent statement in report or statement for benefits from a fraternal benefit society
54-1,123	Selling livestock without evidence of ownership
54-1,124	Branding another's livestock, defacing marks
54-1,125	Forging or altering livestock ownership document when value is \$1,000 or more
57-1211	Intentionally making false oath to uranium severance tax return or report

APPENDIX

CLASS III FELONY

- 60-169 False statement on affidavit of affixture for mobile home or manufactured home
- 60-690 Aiding or abetting a violation of the Nebraska Rules of the Road
- *60-698 Motor vehicle accident resulting in serious bodily injury or death, violation of duty to stop
- *60-6,197.03 Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug or refusing chemical test, fourth offense committed with .15 gram alcohol concentration
- *60-6,197.03 Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug or refusing chemical test, fifth or subsequent offense committed with less than .15 gram alcohol concentration
- *60-6,197.06 Operating a motor vehicle when operator's license has been revoked for driving under the influence, second or subsequent offense
- 66-727 Violation of motor fuel tax laws when the amount involved is \$5,000 or more, provisions relating to evasion of tax, keeping books and records, making false statements
- 71-7462 Wholesale drug distribution in violation of the Wholesale Drug Distributor Licensing Act
- 71-8929 Veterinary drug distribution in violation of the Veterinary Drug Distribution Licensing Act
- 75-151 Violation by officer or agent of common carriers in consolidation or increase in stock, issuance of securities
- 77-5016.01 Falsifying a representation before the Tax Equalization and Review Commission
- 79-541 School district meeting or election, false oath
- 83-174.05 Failure to comply with community supervision, second or subsequent offense
- 83-184 Escape from custody (certain situations)

***Sections noted with an asterisk have additional penalty provisions**

CLASS IIIA FELONY

**Maximum—five years' imprisonment, or ten thousand dollars fine, or both
Minimum—none**

- 28-111 Terroristic threats committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 Stalking, certain situations or subsequent conviction within 7 years, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 Arson in the third degree, damages of \$100 or more, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-111 Criminal mischief, pecuniary loss in excess of \$300 or substantial disruption of public communication or utility, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or

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- her association with such a person
- 28-111 Unauthorized application of graffiti, second or subsequent offense, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
- 28-115 Sexual abuse of an inmate or parolee in the second degree committed against a pregnant woman
- 28-115 Sexual abuse of a protected individual, second degree, committed against a pregnant woman
- 28-115 Domestic assault in the third degree, second or subsequent offense against same intimate partner, committed against a pregnant woman
- 28-201 Criminal attempt to commit sexual assault in the second degree, possession or distribution of certain controlled substances, incest, or assault by a confined person with a deadly or dangerous weapon
- 28-202 Criminal conspiracy to commit a Class IIIA felony
- 28-204 Harboring, concealing, or aiding a felon who committed a Class II felony
- 28-306 Motor vehicle homicide by person driving in a reckless manner
- 28-311 Criminal child enticement
- 28-314 False imprisonment in the first degree
- 28-320.01 Sexual assault of a child in the third degree, first offense
- 28-322.05 Unlawful use of Internet by prohibited sex offender, second or subsequent conviction
- 28-323 Domestic assault in the second degree, first offense
- 28-386 Knowing and intentional abuse, neglect, or exploitation of a vulnerable adult
- 28-398 Assault of an unborn child in the second degree
- *28-416 Manufacture, distribute, deliver, dispense, or possess controlled substances in Schedule IV or V of section 28-405
- 28-457 Permitting a child or vulnerable adult to ingest methamphetamine, second or subsequent offense
- 28-457 Permitting a child or vulnerable adult to inhale, have contact with, or ingest methamphetamine causing serious bodily injury
- 28-634 Unlawful use of an electronic payment card scanning device or reencoder, second or subsequent offense
- 28-707 Child abuse committed knowingly and intentionally and not resulting in serious bodily injury or death
- 28-707 Child abuse committed negligently, resulting in serious bodily injury but not death
- 28-904 Resisting arrest, second or subsequent offense
- 28-904 Resisting arrest using deadly or dangerous weapon
- 28-931 Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional in the third degree
- 28-931.01 Assault on an officer, an emergency responder, a state correctional employee, a Department of Health and Human Services employee, or a health care professional using a motor vehicle
- 28-932 Assault by legally confined person without a deadly weapon
- 28-934 Assault with a bodily fluid against a public safety officer with knowledge that bodily fluid was infected with HIV, Hep B, or Hep C

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- 28-1463.05 Possession of child pornography with intent to distribute by person under 19 years old
- *53-180.05 Knowingly and intentionally dispensing alcohol in any manner to minors or incompetents resulting in serious bodily injury or death caused by the minors' consumption or impaired condition
- 60-690 Aiding or abetting a violation of the Nebraska Rules of the Road
- *60-698 Motor vehicle accident resulting in injury other than serious bodily injury, violation of duty to stop
- *60-6,197.03 Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug or refusing chemical test, third offense committed with .15 gram alcohol concentration
- *60-6,197.03 Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug or refusing chemical test, fourth offense committed with less than .15 gram alcohol concentration
- *60-6,198 Causing serious bodily injury to person or unborn child while driving while intoxicated
- 71-4839 Knowingly purchase or sell a body part for transplantation, therapy, research, or education if removal is to occur after death
- 71-4840 Intentionally falsifying, forging, concealing, defacing, or obliterating a document related to anatomical gifts for financial gain

***Sections noted with an asterisk have additional penalty provisions**

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**Maximum—five years' imprisonment, or ten thousand dollars fine, or both
Minimum—none**

- 2-1825 Forge, counterfeit, or use without authorization an inspection legend or certificate of Director of Agriculture on potatoes
- 8-103 Department of Banking and Finance personnel borrowing money from certain financial institutions or aiding or abetting such violation
- 8-133 Inducing person to make or retain deposit in bank or accepting such inducement
- 8-142 Bank officer, employee, director, or agent violating loan limits resulting in insolvency of bank
- 8-143.01 Illegal bank loans to executive officers, directors, or shareholders
- 8-147 Banks, illegal transfer of assets, limitation on amounts of loans and investments
- 8-1,139 Financial institutions, misappropriation of funds or assets
- 8-225 Trust companies, false statement or book entry, destruction or secretion of records
- 8-333 Building and loan association, false statement or book entry
- 8-1117 Violation of Securities Act of Nebraska
- *8-1729 Willful violation of Commodity Code or rule, regulation, or order under the code
- *9-262 Second or subsequent violation of Nebraska Bingo Act when not otherwise specified
- 9-262 Specified violations of Nebraska Bingo Act
- *9-352 Second or subsequent violation of Nebraska Pickle Card Lottery Act when not otherwise specified

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9-352	Specified violations of Nebraska Pickle Card Lottery Act
*9-434	Second or subsequent violation of Nebraska Lottery and Raffle Act when not otherwise specified
9-434	Specified violations of Nebraska Lottery and Raffle Act
*9-652	Second or subsequent violation of Nebraska County and City Lottery Act when not otherwise specified
9-652	Specified violations of Nebraska County and City Lottery Act
9-814	Providing false information pursuant to the State Lottery Act
10-509	Funding bonds of counties, fraudulent issue or use
11-101.02	False statement in oath of office
23-135.01	False claim against county when value is \$1,000 or more
23-3113	County purchasing agent or staff member violating County Purchasing Act
25-1630	Tampering with jury list
25-1635	Illegal disclosure of juror names
28-111	Assault in the third degree (certain situations) committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Stalking, first offense or certain situations, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	False imprisonment in the second degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Sexual assault in the third degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Arson in the third degree, damages less than \$100, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Criminal mischief, pecuniary loss of \$500 or more but less than \$1,500, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Criminal trespass in the first degree committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-115	Assault in the third degree (certain situations) committed against a pregnant woman
28-115	Sexual assault in the third degree committed against a pregnant woman
28-115	Domestic assault in the third degree, first offense, committed against a pregnant woman
28-201	Criminal attempt to commit certain Class III felonies

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28-202	Criminal conspiracy to commit a Class IV felony
28-204	Harboring, concealing, or aiding a felon who committed a Class III or IIIA felony
28-204	Obstructing the apprehension of a felon who committed a felony other than a Class IV felony
28-205	Aiding consummation of felony
28-307	Assisting suicide
28-310.01	Strangulation generally
28-311.01	Terroristic threats
28-311.04	Stalking (certain situations)
*28-311.08	Knowingly recording, by video, photographic, digital, or other electronic means, another person in a state of undress without his or her consent or knowledge in a place of solitude or seclusion
*28-311.08	Knowingly viewing another person in a state of undress as it is occurring without his or her consent or knowledge in a place of solitude or seclusion, subsequent offense
*28-311.08	Knowingly photograph, film, record, or live broadcast an image of the intimate area of any other person without his or her knowledge and consent when his or her intimate area would not be generally visible to the public, subsequent offense
28-316	Violation of custody with intent to deprive custodian of custody of child
28-322.03	Sexual abuse of an inmate or parolee in the second degree
28-322.04	Sexual abuse of a protected individual in the second degree
28-323	Domestic assault in the third degree by intentionally and knowingly causing bodily injury to his or her intimate partner or by threatening an intimate partner with imminent bodily injury, second or subsequent offense
28-332	Abortion violations
28-335	Abortion by other than licensed physician
28-335	Physician knowingly or recklessly performs, induces, or attempts to perform or induce abortion without being physically present
28-336	Abortion by other than accepted medical procedures
28-346	Use of premature infant aborted alive for experimentation
*28-394	Motor vehicle homicide of an unborn child by person driving under the influence of alcohol or drugs with no prior conviction
28-394	Motor vehicle homicide of an unborn child by person driving in a reckless manner
28-3,108	Intentional or reckless performance of or attempt to perform abortion in violation of the Pain-Capable Unborn Child Protection Act
28-412	Unlawful prescription of narcotic drugs for detoxification or maintenance treatment
*28-416	Knowingly or intentionally unlawfully possessing controlled substance other than marijuana or synthetically produced cannabinoids
*28-416	Knowingly or intentionally possessing more than one pound of marijuana
*28-416	Possession of money used or intended to be used to violate provisions relating to controlled substances
28-418	Knowing or intentional violation of Uniform Controlled Substances Act
28-451	Possession of anhydrous ammonia with intent to manufacture

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	methamphetamine
28-452	Possession of ephedrine, pseudoephedrine, or phenylpropanolamine with intent to manufacture methamphetamine
28-457	Permitting a child or vulnerable adult to inhale or have contact with methamphetamine, second or subsequent offense
28-504	Arson in the third degree, damages of \$100 or more
28-505	Burning to defraud insurer
28-508	Possession of burglar's tools
28-514	Theft of lost, mislaid, or misdelivered property when value is over \$1,500
28-516	Unauthorized use of a propelled vehicle, third or subsequent offense
28-518	Theft when value is \$500 or more but not more than \$1,500
28-518	Theft when value is more than \$200 but less than \$500, second or subsequent offense
28-518	Theft when value is \$200 or less, third or subsequent offense
28-519	Criminal mischief, pecuniary loss of \$1,500 or more or substantial disruption of public communication or utility service
*28-524	Unauthorized application of graffiti, second or subsequent offense
28-603	Forgery in the second degree when face value is over \$300 but less than \$1,000
28-604	Criminal possession of a forged instrument prohibited by section 28-602
28-604	Criminal possession of a forged instrument prohibited by section 28-603, amount or value is \$1,000 or more
28-605	Criminal possession of forgery devices
28-611	Issuing a bad check or other order in an amount of \$500 or more but less than \$1,500
28-611	Issuing a bad check or other order in an amount under \$500, second or subsequent offense
28-611.01	Issuing a no-account check in an amount of \$500 or more but less than \$1,500, first offense
28-611.01	Issuing a no-account check in an amount under \$500, second or subsequent offense
28-612	False statement or book entry in or destruction or secretion of records of financial institution or organization
28-619	Issuing two or more false financial statements to obtain two or more financial transaction devices
28-620	Unauthorized use of a financial transaction device when total value is \$500 or more but less than \$1,500 within a six-month period
28-621	Criminal possession of two or three financial transaction devices
28-623	Unlawful circulation of a financial transaction device in the second degree
28-624	Criminal possession of two or more blank financial transaction devices
28-625	Criminal sale of one blank financial transaction device
28-626	Criminal possession of a forgery device
28-628	Laundering of sales forms
28-629	Unlawful acquisition of sales form processing services
28-630	Unlawful factoring of a financial transaction device
28-631	Committing a fraudulent insurance act when the amount involved is \$500 or more but less than \$1,500

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- 28-631 Committing a fraudulent insurance act when the amount involved is \$200 or more but less than \$500, second or subsequent offense
- 28-631 Committing a fraudulent insurance act with intent to defraud or deceive
- 28-634 Unlawful use of an electronic payment card scanning device or reencoder, first offense
- 28-638 Criminal impersonation by falsely representing business or engaging in profession, business, or occupation without license if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$500 or more but less than \$1,500, first offense
- 28-638 Criminal impersonation by falsely representing business or engaging in profession, business, or occupation without license if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$200 or more but less than \$500, second or subsequent offense
- 28-638 Criminal impersonation by falsely representing business or engaging in profession, business, or occupation without license if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than \$200, third or subsequent offense
- 28-638 Criminal impersonation by providing false identification information to court or law enforcement officer, first offense
- 28-639 Identity theft if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$500 or more but less than \$1,500, first offense
- 28-639 Identity theft if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$200 or more but less than \$500, second or subsequent offense
- 28-639 Identity theft if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than \$200, third or subsequent offense
- 28-640 Identity fraud, second or subsequent offense
- 28-706 Criminal nonsupport in violation of a court order
- *28-801.01 Solicitation of prostitution, second or subsequent offense
- *28-801.01 Solicitation of prostitution with person under 18 years old, first offense
- 28-802 Pandering involving victim at least 18 years old, first offense
- 28-804 Keeping a place of prostitution used by person under 18 years old practicing prostitution
- 28-813.01 Possession by a minor of visual depiction of sexually explicit conduct containing a child
- 28-831 Labor trafficking or sex trafficking resulting from threatening or causing arrest or deportation for immigration violations, threatening or controlling access to controlled substances, exploiting functional or mental impairment, or destroying or holding another's identification or immigration documents
- 28-831 Benefiting from labor trafficking or sex trafficking
- 28-833 Enticement by electronic communication device

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*28-905	Operating a motor vehicle to avoid arrest which is a second or subsequent offense, results in death or injury, or involves willful reckless driving
*28-905	Operating a boat to avoid arrest for felony
28-912	Escape (certain situations excepted)
28-912	Knowingly causing or facilitating an escape
28-912.01	Accessory to escape of juvenile from custody of Office of Juvenile Services
28-917	Bribery
28-918	Bribery of a witness
28-918	Witness accepting bribe or benefit
28-919	Tampering with witness, informant, or juror
28-920	Bribery of a juror
28-920	Juror accepting bribe or benefit
28-922	Tampering with physical evidence
28-935	Fraudulently filing a financing statement, lien, or document
*28-1005	Dogfighting, cockfighting, bearbaiting, etc., promoter, owner, employee, property owner, or spectator
*28-1009	Abandonment or cruel neglect of animal resulting in serious injury, illness, or death
*28-1009	Harassment of police animal resulting in death of animal
*28-1009	Cruel mistreatment of animal involving torture or mutilation
*28-1009	Cruel mistreatment of animal not involving torture or mutilation, second or subsequent offense
28-1102	Promoting gambling in the first degree, second offense
28-1202	Carrying a concealed weapon, second or subsequent offense
28-1203	Transporting or possessing a machine gun, short rifle, or short shotgun
*28-1204.04	Unlawful possession of a firearm at a school
28-1215	Unlawful possession of explosive materials in the first degree
28-1217	Unlawful sale of explosives
28-1219	Explosives, obtaining a permit through false representations
28-1220	Possession of a destructive device
28-1221	Threatening the use of explosives or placing a false bomb
28-1301	Removing, abandoning, or concealing human skeletal remains or burial goods
28-1307	Sell or offer for sale diseased meat
28-1343.01	Unauthorized computer access creating grave risk of death
28-1344	Unauthorized access to a computer which deprives another of property or services or obtains property or services of another with value under \$1,000
28-1345	Unauthorized access to a computer causing damages under \$1,000
28-1351	Unlawful membership recruitment for an organization or association engaged in criminal acts
*28-1469	Operation of aircraft while under the influence of alcohol or drugs, third or subsequent offense
28-1482	Unlawful paramilitary activities
29-908	Failing to appear when on bail for felony offense
29-4011	Failure by felony sex offender to register under the Sex Offender Registration Act, first offense

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29-4011	Failure by misdemeanor sex offender to register under the Sex Offender Registration Act, second or subsequent offense
32-312	Election falsification on voter registration
32-330	Election falsification for unlawful use of list of registered voters
32-915	Election falsification on provisional ballot
32-939	Election falsification on registering or voting outside the country
32-947	Election falsification on ballot to vote early
32-949	Election falsification on ballot to vote early
32-1502	Election falsification
32-1503	Elections, unlawful registration acts
32-1504	Elections, neglect of duty, corruption, or fraud by deputy registrar
32-1508	Election registration, perjury by voter
32-1526	Fraudulent voting by election official
32-1529	Resident of another state voting in this state
32-1530	Voting by ineligible person
32-1531	Voting outside county of residence
32-1532	Aiding unlawful voting
32-1533	Procuring another to vote in county other than that of residence
32-1534	Voting more than once in same election
32-1537	Employer coercing political action of employees
32-1538	Deceiving illiterate elector
32-1539	Violations relating to ballots for early voting
32-1540	Fraudulent voting
32-1541	Making fraudulent entry in list of voters book
32-1542	Unlawful possession of list of voters book, official summary, or election returns
32-1543	Obtaining or attempting to obtain or destroy ballot boxes or ballots by improper means
32-1544	Destruction or falsification of election materials
32-1545	Disclosing election returns before polls have closed or without authorization from election officials
32-1546	Offering or receiving money for signing petitions or falsely swearing to circulator's affidavit on petition
32-1551	Special elections by mail, specified violations
37-554	Prohibited use of explosives or poisons in waters of state
37-1288	Forgery of motorboat title or certificate or use of false name in bill of sale or sworn statement of ownership
37-1298	Knowingly transfer motorboat without salvage certificate of title
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
42-924	Knowingly violating a protection order issued pursuant to domestic abuse or harassment case with a prior conviction for violating a protection order
44-165	Financial conglomerate or its directors, officers, employees, or agents violating supervision requirements

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44-3,121	Borrowing or rental of securities of insurance company by member, director, or attorney
44-2146	Willful violation of Insurance Holding Company System Act
44-2147	Willful filing of false report under Insurance Holding Company System Act
45-191.03	Loan broker collecting advance fee in excess of \$300 and other violations of loan broker provisions
45-926	Operating delayed deposit services business without license
*46-155	Irrigation districts, officers interested in contracts, accepting bribes or gratuities
48-654.01	Engaging in business practices to avoid higher combined tax rates under the Employment Security Law
49-1476.01	Campaign contributions or expenditures by state lottery contractor
49-14,134	Filing false statement, report, or verification under Nebraska Political Accountability and Disclosure Act
49-14,135	Perjury before Nebraska Accountability and Disclosure Commission
54-1,125	Using false document of livestock ownership
54-1,125	Forging or altering livestock ownership document when value is over \$300 but less than \$1,000
54-622.01	Owner of dangerous dog which inflicts serious bodily injury, second or subsequent offense
54-753.05	Importation of livestock in violation of an embargo issued by State Veterinarian
*54-903	Intentionally, knowingly, or recklessly abandon or cruelly neglect livestock animal resulting in serious injury or illness or death of the livestock animal
*54-903	Cruelly mistreat a livestock animal, second or subsequent offense
54-1509	Importation of swine with hog cholera, interference with destruction
54-1521	Violation of laws pertaining to hog cholera control and eradication
54-1808	Violation of Nebraska Livestock Sellers Protective Act
54-1913	Violation of Nebraska Meat and Poultry Inspection Law with intent to defraud or by distributing adulterated article
57-719	Preparation or presentation of false or fraudulent oil and gas severance tax document
59-801	Unlawful restraint of trade or commerce
59-802	Unlawful monopolizing of trade or commerce
59-805	Unlawful restraint of trade; underselling
59-815	Corporation or other association engaged in unlawful restraint of trade
59-825	Refusal to attend and testify in restraint of trade proceedings
59-1522	Unlawful sale and distribution of cigarettes
59-1757	Violations in sales or leases of seller-assisted marketing plans
60-176	Knowing transfer of wrecked, damaged, or destroyed motor vehicle, all-terrain vehicle, or minibike without appropriate certificate of title
60-179	Fraud or forgery in obtaining certificate of title to motor vehicle, all-terrain vehicle, or minibike
60-196	Violating laws relating to odometers
60-492	Impersonating an officer under Motor Vehicle Operator's License Act
60-4,111.01	Trade, sell, or share machine-readable information encoded on driver's license or state identification card

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60-4,111.01	Compile, store, or preserve machine-readable information encoded on driver's license or state identification card without authorization
60-4,111.01	Intentional or grossly negligent programming by the programmer which allows for the storage of more than the age and identification number from machine-readable information encoded on driver's license or state identification card or wrongfully certifying the software
60-4,111.01	Retailer or seller knowingly storing more information than authorized from the machine-readable information encoded on driver's license or state identification card
60-4,111.01	Unauthorized trading, selling, sharing, use for marketing or sales, or reporting of scanned, compiled, stored, or preserved machine-readable information encoded on driver's license or state identification card
60-690	Aiding or abetting a violation of the Nebraska Rules of the Road
*60-6,197.06	Operating a motor vehicle when operator's license has been revoked for driving under the influence, first offense
60-6,211.11	Operating a motor vehicle while under the influence after tampering with or circumventing an ignition interlock device installed under a court order or Department of Motor Vehicles order while the order is in effect or operating a motor vehicle while under the influence which is not equipped with an ignition interlock device in violation of a court order or Department of Motor Vehicles order
60-1416	Acting as motor vehicle, motorcycle, or trailer dealer, salesperson, or manufacturer, etc., without license
60-2912	Misrepresenting identity or making false statement on application submitted under the Uniform Motor Vehicle Records Disclosure Act
66-727	Violations of motor fuel tax laws when the amount involved is less than \$5,000, provisions relating to evasion of tax, keeping books and records, making false statements
66-727	Violations of motor fuel tax laws, including making returns and reports, assignment of licenses and permits, payment of tax
66-1226	Selling automotive spark ignition engine fuels not within specifications, second or subsequent offense
66-1822	False or fraudulent entries in books of a jurisdictional utility
68-1017	Obtaining through fraud assistance to aged, blind, or disabled persons, aid to dependent children, or supplemental nutrition assistance program benefits when value is \$500 or more
68-1017.01	Unlawful use, alteration, or transfer of supplemental nutrition assistance program benefits when value is \$500 or more
68-1017.01	Unlawful possession or redemption of supplemental nutrition assistance program benefits when value is \$500 or more
68-1017.01	Unlawful possession of blank supplemental nutrition assistance program authorizations
69-109	Sale or transfer of personal property with security interest without consent
69-2408	Providing false information on an application for a certificate to purchase a handgun
69-2420	Unlawful acts relating to purchase of a handgun
69-2421	Unlawful sale or delivery of a handgun
69-2422	Knowingly and intentionally obtaining a handgun for purposes of

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	unlawful transfer of the handgun
69-2430	Falsified concealed handgun permit application
*69-2709	Knowingly submit false information regarding cigarette and tobacco sales
70-508	False statement on sale, lease, or transfer of public electric plant
70-511	Excessive promotion expenses on sale of public electric plant
70-514	Failure to file statement of expenditures related to transfer of electric plant facilities or filing false statement
70-2104	Damage, injure, destroy, or attempt to damage, injure, or destroy equipment or structures owned and used by public power suppliers to generate, transmit, or distribute electricity or otherwise interrupt the generation, transmission, or distribution of electricity by a public power supplier
71-649	Vital statistics, unlawful acts
71-2228	Illegal receipt of food supplement benefits when value is \$500 or more
71-2229	Unlawful use, alteration, or transfer of food instruments or food supplements when value is \$500 or more
71-2229	Unlawful possession or redemption of food supplement benefits when value is \$500 or more
71-2229	Unlawful possession of blank authorization to participate in the WIC program or CSF program
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
75-909	Violation of Grain Dealer Act
76-2325.01	Interference with utility poles and wires or transmission of light, heat, power, or telecommunications, loss of \$1,500 or more or substantial disruption of service
76-2728	Violation of Nebraska Foreclosure Protection Act
77-1726	Failure of a corporation, company, or officer or agent to pay taxes
77-2310	Unlawful removal of state funds or illegal profits by State Treasurer
77-2323	Violation of provisions on deposit of county funds
77-2325	Unlawful removal of county funds or illegal profits by county treasurers
77-2381	Violation of provisions on deposit of local hospital district funds
77-2383	Unlawful removal of funds or illegal profits by secretary-treasurer of local hospital district
77-2614	Altered, forged, or counterfeited stamp, license, permit, or cigarette tax meter impression for sale of cigarettes
77-2615	Violation of cigarette tax provisions when not otherwise specified
77-2615	Evasion of cigarette tax provisions, affixing unauthorized stamp, or

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	sales or possession of cigarettes of manufacturer not in directory
77-2713	Failure to collect or false returns on sales and use tax
77-27,113	Evasion of income tax
77-27,114	Failure to collect or account for income taxes
77-27,116	False return on income tax
*77-27,119	Unauthorized disclosure of confidential tax information by current or former officers or employees of the Auditor of Public Accounts or the office of Legislative Audit
77-4024	Violation of Tobacco Products Tax Act or evasion of act
77-4309	Dealer distributing or possessing marijuana or a controlled substance without affixing the official stamp, label, or other indicium
77-5544	Unlawful disclosure of confidential information by qualified independent accounting firm under Invest Nebraska Act
*81-161.05	Material division personnel having financial or beneficial personal interest or receiving gifts or rebates
*81-1108.56	State building division personnel having financial or beneficial personal interest or receiving gifts or rebates
81-1508.01	Specific violations of Environmental Protection Act, Integrated Solid Waste Management Act, or Livestock Waste Management Act
81-15,111	Violation of Low-Level Radioactive Waste Disposal Act
81-3442	Violation of Engineers and Architects Regulation Act, second or subsequent offense
83-174.05	Failure to comply with community supervision, first offense
83-184	Escape from custody (certain situations)
83-198	Threatening or attempting to influence a member of the Board of Parole
*83-1,127.02	Operation of vehicle while under the influence with disabled, bypassed, or altered ignition interlock device or without an ignition interlock device or permit in violation of board order
83-1,133	Threatening or attempting to influence a member of the Board of Pardons
83-417	Allowing a committed offender to escape or be visited without approval
83-443	Financial interest in convict labor
*83-912	Director or employee of Department of Correctional Services receiving prohibited gift or gratuity
86-290	Intercepting or interfering with wire, electronic, or oral communication
86-295	Unlawful tampering with communications equipment or transmissions
86-296	Shipping or manufacturing devices capable of intercepting certain communications
86-2,102	Interference with satellite transmissions or operation
86-2,104	Unauthorized access to electronic communication services
87-303.09	Violation of court order or written assurance of voluntary compliance under Uniform Deceptive Trade Practices Act
88-543	Issuing a receipt for grain not received, improperly recording grain as received or loaded, or creating a post-direct delivery storage position without proper documentation or grain in storage
88-545	Violation of Grain Warehouse Act when not otherwise specified

***Sections noted with an asterisk have additional penalty provisions**

APPENDIX

UNCLASSIFIED FELONIES, see section 28-107

- 69-110 Removal from county of personal property subject to a security interest with intent to deprive of security interest
–fine of not more than one thousand dollars
–imprisonment of not more than ten years
- 77-27,119 Unauthorized disclosure of confidential tax information by Tax Commissioner, officer, employee, or third-party auditor
–fine of not less than one hundred dollars nor more than five hundred dollars
–imprisonment of not more than five years
–both
- 77-3210 Receipt of profit from rental, management, or disposition of Land Reutilization Authority lands
–imprisonment of not less than two years nor more than five years
- 83-1,124 Parolee leaving state without permission
–imprisonment of not more than five years

***Sections noted with an asterisk have additional penalty provisions**

OTHER MANDATORY MINIMUMS:

- 29-2221 Habitual criminal

CLASS I MISDEMEANOR

Maximum–not more than one year imprisonment, or one thousand dollars fine, or both

Minimum–none

- 2-1215 Conducting horseracing or betting on horseraces without license or violating horseracing provisions
- 2-1218 Drugging horses or permitting drugged horses to run in a horserace
- 2-2647 Violation of Pesticide Act, second or subsequent offense
- 8-119 Officers of corporation filing false statement for banking purposes
- 8-142 Bank officer, employee, director, or agent violating loan limits by \$40,000 or more or resulting in monetary loss of over \$20,000 to bank
- 8-145 Improper solicitation or receipt of benefits, unlawful inducement for bank loan
- 8-189 Attempting to prevent Department of Banking and Finance from taking possession of insolvent or unlawfully operated bank
- 8-1,138 Violation of a final order issued by Director of Banking and Finance
- 8-224.01 Division of fees for legal services by a trust company attorney
- 8-2745 Acting without license or intentionally falsifying records in violation of Nebraska Money Transmitters Act
- 9-230 Unlawfully conducting or awarding a prize at a bingo game, second or subsequent offense
- 9-262 Violation of Nebraska Bingo Act when not otherwise specified, first offense
- 9-266 Disclosure by Tax Commissioner or employee of reports or records of a licensed distributor or manufacturer under Nebraska Bingo Act
- 9-351 Unlawfully possessing pickle cards or conducting a pickle card lottery
- 9-352 Violation of Nebraska Pickle Card Lottery Act when not otherwise specified, first offense

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CLASS I MISDEMEANOR

9-356	Disclosure by Tax Commissioner or employee of returns or reports of licensed distributor or manufacturer under Nebraska Pickle Card Lottery Act
9-434	Violation of Nebraska Lottery and Raffle Act when not otherwise specified, first offense
9-652	Violation of Nebraska County and City Lottery Act when not otherwise specified, first offense
9-653	Disclosure by Tax Commissioner or employee of reports or records of a licensed manufacturer-distributor under Nebraska County and City Lottery Act
9-814	Sale of lottery tickets under the State Lottery Act without authorization or at other than the established price
9-814	Release of information obtained from background investigation under the State Lottery Act
10-807	Misrepresentations for aid from county aid bonds
*18-2532	Initiative and referendum, making false affidavit or taking false oath
*18-2533	Initiative and referendum, destruction, falsification, or suppression of a petition
*18-2534	Initiative and referendum petition, signing by person not registered to vote or paying for or deceiving another to sign a petition
*18-2535	Initiative and referendum, failure by city clerk to comply or unreasonable delay in complying with statutes
20-334	Willful failure to obey a subpoena or order or intentionally mislead another in proceedings under the Nebraska Fair Housing Act
20-344	Coerce, intimidate, threaten, or interfere with the exercise or enjoyment of rights under the Nebraska Fair Housing Act
20-411	Physician or health care provider failing to transfer care of patient under declaration or living will
20-411	Physician failing to record a living will or a determination of a terminal condition or persistent vegetative state
20-411	Concealing, canceling, defacing, obliterating, falsifying, or forging a living will
20-411	Concealing, falsifying, or forging a revocation of a living will
20-411	Requiring or prohibiting a living will for health care services or insurance
20-411	Coercing or fraudulently inducing an individual to make a living will
21-212	Signing a false document under the Nebraska Model Business Corporation Act with intent to file with the Secretary of State
21-1912	Signing a false document under the Nebraska Nonprofit Corporation Act with intent to file with the Secretary of State
28-107	Misdemeanor defined outside of criminal code
28-111	Assault in the third degree (certain situations) committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Criminal mischief, pecuniary loss of \$200 or more but less than \$500, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person

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CLASS I MISDEMEANOR

28-111	Criminal trespass in the second degree (certain situations) committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-115	Assault in the third degree (certain situations) committed against a pregnant woman
28-201	Criminal attempt to commit a Class IIIA or IV felony
28-204	Harboring, concealing, or aiding a felon who committed a Class IV felony
28-204	Obstructing the apprehension of a felon who committed a Class IV felony
28-301	Compounding a felony
28-306	Motor vehicle homicide by person not under the influence of alcohol or drugs or not driving in a reckless manner
28-310	Assault in the third degree (certain situations)
28-311.04	Stalking (certain situations)
*28-311.08	Knowingly viewing another person in a state of undress as it is occurring without his or her consent or knowledge in a place of solitude or seclusion, first offense
*28-311.08	Knowingly photograph, film, record, or live broadcast an image of the intimate area of any other person without his or her knowledge and consent when his or her intimate area would not be generally visible to the public, first offense
28-315	False imprisonment in the second degree
28-320	Sexual assault in the third degree
28-322.05	Unlawful use of Internet by prohibited sex offender, first offense
28-323	Domestic assault in the third degree by intentionally and knowingly causing bodily injury to his or her intimate partner or by threatening an intimate partner with imminent bodily injury, first offense
28-323	Domestic assault in the third degree by threatening an intimate partner in a menacing manner
28-394	Motor vehicle homicide of an unborn child by person not under the influence of alcohol or drugs or not driving in a reckless manner
28-399	Assault of an unborn child in the third degree
28-443	Delivering drug paraphernalia to a minor
28-457	Permitting a child or vulnerable adult to inhale, have contact with, or ingest methamphetamine, first offense
28-504	Arson in the third degree, damages less than \$100
28-514	Theft of lost, mislaid, or misdelivered property when value is \$500 or more but not more than \$1,500
28-514	Theft of lost, mislaid, or misdelivered property when value is more than \$200 but less than \$500, second or subsequent offense
28-514	Theft of lost, mislaid, or misdelivered property when value is \$200 or less, third or subsequent offense
28-516	Unauthorized use of a propelled vehicle, second offense
28-518	Theft when value is more than \$200 but less than \$500
28-518	Theft when value is \$200 or less, second offense
28-519	Criminal mischief, pecuniary loss of \$500 or more but less than \$1,500
28-520	Criminal trespass in the first degree

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CLASS I MISDEMEANOR

- 28-523 Littering, third or subsequent offense
- 28-603 Forgery in the second degree when face value is \$300 or less
- 28-604 Criminal possession of a forged instrument prohibited by section 28-603, value is more than \$300 but less than \$1,000
- 28-607 Making, using, or uttering of slugs of value of \$100 or more
- 28-610 Impersonating a peace officer
- 28-611 Issuing a bad check or other order in an amount of \$200 or more but less than \$500, first offense
- 28-611.01 Issuing a no-account check in an amount of \$200 or more but less than \$500, first offense
- 28-613 Commercial bribery or breach of duty to act disinterestedly
- 28-616 Altering an identification number
- 28-617 Receiving an altered article
- 28-619 Issuing a false financial statement to obtain a financial transaction device
- 28-620 Unauthorized use of a financial transaction device when total value is \$200 or more but less than \$500 within a six-month period
- 28-624 Criminal possession of a blank financial transaction device
- 28-631 Possessing fake or counterfeit insurance policies, certificates, identification cards, or binders with intent to defraud or deceive
- 28-631 Committing a fraudulent insurance act when the amount involved is \$200 or more but less than \$500, first offense
- 28-633 Printing more than the last 5 digits of a payment card account number upon a receipt provided to payment card holder, second or subsequent offense
- 28-635 Install object or material not designed for motor vehicle air bag system
- 28-638 Criminal impersonation by falsely representing business or engaging in profession, business, or occupation without license if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$200 or more but less than \$500, first offense
- 28-638 Criminal impersonation by falsely representing business or engaging in profession, business, or occupation without license if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than \$200, second offense
- 28-638 Criminal impersonation by providing false identification information to employer to obtain employment, second or subsequent offense
- 28-639 Identity theft if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was \$200 or more but less than \$500, first offense
- 28-639 Identity theft if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than \$200, second offense
- 28-640 Identity fraud, first offense
- 28-701 Bigamy
- 28-705 Abandonment of spouse, child, or dependent stepchild
- 28-707 Child abuse committed negligently, not resulting in serious bodily injury or death

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CLASS I MISDEMEANOR

28-709	Contributing to the delinquency of a child
*28-801	Prostitution by person 18 years old or older, third or subsequent offense
*28-801.01	Solicitation of prostitution with person 18 years old or older, first offense
28-804	Keeping a place of prostitution not used by person under 18 years old practicing prostitution
28-805	Debauching a minor
28-808	Obscene literature and material, sell or possess with intent to sell to minor
28-809	Obscene motion picture, show, or presentation, admission of minor
28-813	Prepare, distribute, order, produce, exhibit, or promote obscene literature or material
28-831	Labor trafficking or sex trafficking resulting from causing or threatening financial harm, including debt bondage
28-901	Obstructing government operations
28-904	Resisting arrest, first offense
*28-905	Operating a motor vehicle to avoid arrest which is a first offense, does not result in death or injury, or does not involve willful reckless driving
*28-905	Operating a boat to avoid arrest for misdemeanor or ordinance violation
28-906	Obstructing a peace officer, judge, or police animal
28-907	False reporting (certain situations)
28-908	Interference with firefighter on official duty
28-909	Falsifying records of a public utility
28-913	Introducing escape implements
28-915.01	False statement under oath or affirmation in an official proceeding or to mislead a public servant
28-934	Assault with a bodily fluid against a public safety officer without knowledge regarding whether bodily fluid was infected with HIV, Hep B, or Hep C
*28-1005.01	Knowing or intentional ownership or possession of animal fighting paraphernalia for dogfighting, cockfighting, bearbaiting, or pitting an animal against another
*28-1009	Abandonment or cruel neglect of animal not resulting in serious injury, illness, or death
*28-1009	Cruel mistreatment of animal not involving torture or mutilation, first offense
28-1019	Violation of court order related to felony animal abuse conviction
28-1102	Promoting gambling in the first degree, first offense
28-1202	Carrying a concealed weapon, first offense
28-1204	Unlawful possession of a handgun
28-1216	Unlawful possession of explosive materials in the second degree
28-1218	Use of explosives without a permit if not eligible for a permit
28-1254	Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug with person under 16 years old as passenger
28-1302	Concealment of death to prevent determination of cause or circumstances of death
28-1312	Interfering with the police radio system
28-1343.01	Unauthorized computer access creating risk to public health and safety
28-1346	Unauthorized access to or use of a computer to obtain confidential information, second or subsequent offense

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CLASS I MISDEMEANOR

29-1926	Improper release or use of a videotape of a child victim or child witness
30-3432	Altering, forging, concealing, or destroying a power of attorney for health care or a revocation of a power of attorney for health care
30-3432	Physician or health care provider willfully preventing transfer of care of principal under durable power of attorney for health care
*32-1518	Election officials, violation of duties imposed by election laws
32-1522	Unlawful printing, possession, or use of ballots
32-1546	Signing petition without being registered to vote
37-618	Possession of suspended or revoked permit to hunt, fish, or harvest fur
37-809	Unlawful acts relating to endangered or threatened species of wildlife or wild plants
37-1254.10	Operating a motorboat or personal watercraft while during a period of court-ordered prohibition for operating under the influence of alcohol or drugs or for refusal to submit to a chemical test for operating a motorboat or personal watercraft while under the influence of alcohol or drugs, second or subsequent offense
*37-1254.12	Operating a motorboat or personal watercraft while under the influence of alcohol or drugs or refusing to submit to a chemical test for operating a motorboat or personal watercraft while under the influence of alcohol or drugs, second or subsequent offense
38-1,106	Disclosure of confidential complaints, investigational records, or reports regarding violation of Uniform Credentialing Act
39-310	Depositing materials on roads or ditches, third or subsequent offense
39-311	Placing burning materials or items likely to cause injury on highways, third or subsequent offense
42-113	Failing to file and record or filing false marriage certificate or illegally joining others in marriage
42-924	Knowingly violating a protection order issued pursuant to domestic abuse or harassment case, first offense
44-10,108	Making a fraudulent statement to a fraternal benefit society
44-2007	Violation of Unauthorized Insurers Act
44-4806	Failing to cooperate with, obstructing, interfering with, or violating any order issued by the Director of Insurance under the Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act
45-191.03	Loan broker collecting advance fee of \$300 or less or failing to make required filings
45-747	Engaging in mortgage banking or mortgage loan originating if convicted of certain misdemeanors or a felony
45-1015	Acting without license under the Nebraska Installment Loan Act
46-1141	Unlawful tampering with or damaging chemigation equipment
48-125.01	Attempted avoidance of payment of workers' compensation benefits
48-145.01	Failure to comply with workers' compensation insurance required of employers
48-211	Failure or refusal to supply laborer's service letter
48-821	Interfere with or coerce others to strike or otherwise hinder governmental service
48-1908	Drug or alcohol tests, altering results
48-1909	Drug or alcohol tests, tampering with body fluids
48-2615	Athlete agent violating Nebraska Uniform Athlete Agents Act

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CLASS I MISDEMEANOR

48-2711	Violations relating to professional employer organizations
53-180.05	Creation or alteration of identification for sale or delivery to a person under twenty-one years old
53-180.05	Dispensing alcohol in any manner to minors or incompetents not resulting in serious bodily injury or death
54-1,125	Forging or altering livestock ownership document when value is \$300 or less
54-622.01	Owner of dangerous dog which inflicts serious bodily injury, first offense
54-634	Violation of Commercial Dog and Cat Operator Inspection Act
54-750	Harboring or prohibited sale of diseased animals, second or subsequent offense
54-751	Violation of rules and regulations relating to the Exotic Animal Auction or Exchange Venue Act or provisions on diseased animals and disposal of carcasses, second or subsequent offense
54-752	Violation of the Exotic Animal Auction or Exchange Venue Act or provisions relating to diseased animals and disposal of carcasses, second or subsequent offense
54-771	Failure by herd owner or custodian to develop or follow a herd plan relating to livestock anthrax
*54-778	Failure to comply with the Anthrax Control Act
54-781	Violation of the Anthrax Control Act when not otherwise specified
*54-903	Intentionally, knowingly, or recklessly abandon or cruelly neglect livestock animal not resulting in serious injury or illness or death of the livestock animal
*54-903	Cruelly mistreat a livestock animal, first offense
54-909	Violating court order not to own or possess a livestock animal for at least five years after the date of conviction for second or subsequent offense of cruel mistreatment of an animal or for intentionally, knowingly, or recklessly abandoning or cruelly neglecting livestock animal resulting in serious injury or illness or death of the livestock animal
54-911	Intentionally trip or cause to fall, or lasso or rope the legs of, any equine by any means for the purpose of entertainment, sport, practice, or contest
54-912	Intentionally trip, cause to fall, or drag any bovine by its tail by any means for the purpose of entertainment, sport, practice, or contest
59-505	Unlawful discrimination in sales or purchases of products, commodities, or property
60-484.02	Disclosure of digital image or signature by Department of Motor Vehicles, law enforcement, or Secretary of State's office
*60-4,108	Operating motor vehicle in violation of court order or while operator's license is revoked or impounded, fourth or subsequent offense
60-559	Forging or filing a forged document for proof of financial responsibility for a motor vehicle
60-690	Aiding or abetting a violation of the Nebraska Rules of the Road
60-696	Second or subsequent conviction in 12 years for failure of driver to stop and report a motor vehicle accident
*60-6,197.03	Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug or refusing chemical test, second offense committed with .15 gram alcohol concentration
60-6,211.11	Operating a motor vehicle after tampering with or circumventing an

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CLASS I MISDEMEANOR

	ignition interlock device installed under a court order or Department of Motor Vehicles order while the order is in effect or operating a motor vehicle which is not equipped with an ignition interlock device in violation of a court order or Department of Motor Vehicles order
*60-6,218	Reckless driving or willful reckless driving, third or subsequent offense
*60-2912	Disclosure of sensitive personal information by Department of Motor Vehicles
66-1226	Selling automotive spark ignition engine fuels not within specifications, first offense
*69-2408	Intentional violation of provisions on acquisition of handguns
69-2419	Unlawful request for criminal history record check or dissemination of such information
*69-2443	Refusal to allow peace officer or emergency services personnel to secure concealed handgun
*69-2443	Carrying concealed handgun at prohibited site or while under the influence, second or subsequent offense
*69-2443	Failure to report discharge of concealed handgun, second or subsequent offense
*69-2443	Failure to carry or display concealed handgun permit, second or subsequent offense
*69-2443	Failure to inform peace officer of concealed handgun, second or subsequent offense
71-458	Violation of Health Care Facility Licensure Act
71-649	Vital statistics, unlawful acts
71-1950	Violation of Children's Residential Facilities and Placing Licensure Act
71-4608	Illegal manufacture or sale of manufactured homes or recreational vehicles
71-4608	Violation of manufactured home or recreational vehicle standards endangering the safety of a purchaser
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
74-921	Operating a locomotive or acting as the conductor while intoxicated
75-127	Unjust discrimination or prohibited practice in rates by common carrier, shipper, or consignee
76-1315	Violation of laws on retirement communities and subdivisions
76-1722	Unlawful time-share interval disposition or violating time-share laws
76-2325.01	Interference with utility poles and wires or transmission of light, heat, power, or telecommunications, loss of \$500 or more but less than \$1,500 (certain situations)
77-1816	Fraudulent sales of real property for delinquent real estate taxes

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CLASS I MISDEMEANOR

- 77-2115 Disclosure of confidential information on estate or generation-skipping transfer tax records
- 77-2326 Failure to act regarding deposit of county funds by county treasurers
- 77-2384 Secretary-treasurer of local hospital district, failure to comply with provisions on deposit of public funds
- 77-2704.33 Failure of a contractor or taxpayer to pay certain sales taxes of \$300 or more
- 77-2711 Wrongful disclosure of records and reports relating to sales and use tax
- 77-2711 Disclosure of taxpayer information by employees or former employees of the office of Legislative Audit or the Auditor of Public Accounts or certain municipalities
- 77-3522 Oath or affirmation regarding false or fraudulent application for homestead exemption
- 77-5016 False statement to Tax Equalization and Review Commission
- 81-829.73 Fraudulently or willfully making a misstatement of fact in connection with an application for financial assistance under the Emergency Management Act
- 81-1508.01 Violations of solid waste and livestock waste laws and regulations
- 81-1717 Unlawful soliciting of professional services under Nebraska Consultants' Competitive Negotiation Act
- 81-1718 Professional making unlawful solicitation under Nebraska Consultants' Competitive Negotiation Act
- 81-1719 Agency official making unlawful solicitation under Nebraska Consultants' Competitive Negotiation Act
- 81-1830 False claim under Nebraska Crime Victim's Reparations Act
- 81-2143 Violation of State Electrical Act
- 81-3442 Violation of Engineers and Architects Regulation Act, first offense
- 81-3535 Unauthorized practice of geology, second or subsequent offense
- 83-1,127.02 Operation of vehicle with disabled, bypassed, or altered ignition interlock device or without an ignition interlock device or permit in violation of board order
- 86-234 Violation of Telemarketing and Prize Promotions Act
- 86-290 Intercepting or interfering with certain wire, electronic, or oral communication
- 86-298 Unlawful use of pen register or trap-and-trace device
- *86-2,104 Unlawful access to electronic communication service
- 88-548 Illegal use of grain probes
- 89-1,101 Violation of Weights and Measures Act or order of Department of Agriculture, second or subsequent offense

***Sections noted with an asterisk have additional penalty provisions**

CLASS II MISDEMEANOR

**Maximum—six months' imprisonment, or one thousand dollars fine, or both
Minimum—none**

- 1-166 Accountants, persons using titles, initials, trade names when not qualified or authorized to do so
- 2-10,115 Specified violations of Plant Protection and Plant Pest Act, second or subsequent offense

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CLASS II MISDEMEANOR

2-1221	Receipt or delivery of certain off-track wagers
2-1811	Violation of Nebraska Potato Development Act
3-152	Violation of State Aeronautics Department Act
*8-109	Bank examiner failing to report bank insolvency or unsafe condition
8-118	Promoting the organization of a corporation to conduct the business of banking or selling stock prior to issuance of charter
8-142	Bank officer, employee, director, or agent violating loan limits by \$20,000 or more but less than \$40,000 or resulting in monetary loss of \$10,000 or more but less than \$20,000
8-702	Banking institution failing to give notice if deposits are not insured
9-345.03	Unlawfully placing a pickle card dispensing device in operation
9-513	Violation of Nebraska Small Lottery and Raffle Act, second or subsequent offense
9-701	Violation of provisions relating to gift enterprises
9-814	Failure by lottery game retailer to maintain and make available records of separate accounts under State Lottery Act
9-814	Knowingly sell lottery tickets to person less than 19 years old
12-1118	False or fraudulent reporting or any violation under Burial Pre-Need Sale Act
14-415	Violation of building ordinance or regulations in city of the metropolitan class, third or subsequent offense within two years of prior offense
*22-303	Relocation of county seats, refusal by officers to move offices and records
23-135.01	False claim against county when value is more than \$100 but less than \$1,000
23-2325	False or fraudulent acts to defraud the Retirement System for Nebraska Counties
23-2544	Violation of county personnel provisions for counties with population under 150,000
*23-3596	Board of trustees of hospital authority, pecuniary interest in contracts
24-711	False or fraudulent acts to defraud the Nebraska Judges Retirement System
28-111	Criminal mischief, pecuniary loss is less than \$200, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Criminal trespass in the second degree (certain situations) committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-111	Unauthorized application of graffiti, first offense, committed against a person because of his or her race, color, religion, ancestry, national origin, gender, sexual orientation, age, or disability or because of his or her association with such a person
28-201	Criminal attempt to commit a Class I misdemeanor
28-310	Assault in the third degree (certain situations)
28-311.06	Hazing
28-311.09	Violation of harassment protection order
28-316	Violation of custody without intent to deprive custodian of custody of

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CLASS II MISDEMEANOR

	child
28-339	Discrimination against person refusing to participate in an abortion
28-344	Violation of provisions relating to abortion reporting forms
28-442	Unlawful possession or manufacture of drug paraphernalia
28-445	Manufacture or delivery of an imitation controlled substance, second or subsequent offense
28-511.03	Possession in store of security device countermeasure
28-514	Theft of lost, mislaid, or misdelivered property when value is more than \$200 but less than \$500
28-514	Theft of lost, mislaid, or misdelivered property when value is \$200 or less, second offense
28-515.01	Fraudulently obtaining telecommunications service
28-518	Theft when value is \$200 or less
28-519	Criminal mischief, pecuniary loss of \$200 or more but less than \$500
28-521	Criminal trespass in the second degree (certain situations)
28-523	Littering, second offense
28-604	Criminal possession of a forged instrument prohibited by section 28-603, value is \$300 or less
28-607	Making, using, or uttering of slugs of value less than \$100
28-611	Issuing a bad check or other order in an amount of less than \$200, first offense
28-611	Issuing bad check or other order with insufficient funds
28-611.01	Issuing a no-account check in an amount of less than \$200, first offense
28-614	Tampering with a publicly exhibited contest
28-620	Unauthorized use of a financial transaction device when total value is less than \$200 within a six-month period
28-631	Committing a fraudulent insurance act when the amount involved is less than \$200
28-638	Criminal impersonation by falsely representing business or engaging in profession, business, or occupation without license if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than \$200, first offense
28-638	Criminal impersonation by providing false identification information to employer to obtain employment, first offense
28-639	Identity theft if no credit, money, goods, services, or other thing of value was gained or was attempted to be gained, or if the credit, money, goods, services, or other thing of value that was gained or was attempted to be gained was less than \$200, first offense
28-706	Criminal nonsupport not in violation of court order
*28-801	Prostitution by person 18 years old or older, first or second offense
28-806	Public indecency
28-811	Obscene literature, material, etc., false representation of age by minor, parent, or guardian, unlawful employment of minor
28-903	Refusing to aid a peace officer
28-910	Filing false reports with regulatory bodies
28-911	Abuse of public records
28-915.01	False statement under oath or affirmation if statement is required by law

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CLASS II MISDEMEANOR

	to be sworn or affirmed
28-924	Official misconduct
28-926	Oppression under color of office
*28-927	Neglecting to serve warrant if offense for warrant is a felony
28-1103	Promoting gambling in the second degree
28-1105	Possession of gambling records in the first degree
28-1107	Possession of a gambling device
28-1218	Use of explosives without a permit if eligible for a permit
28-1233	Failure to notify fire protection district of use or storage of explosive material over one pound
28-1240	Unlawful transportation of anhydrous ammonia
28-1304.01	Unlawful use of liquified remains of dead animals
28-1311	Interference with public service companies
28-1326	Unlawful transfer of recorded sound
28-1326	Sell, distribute, circulate, offer for sale, or possess for sale recorded sounds without proper label
28-1343.01	Unauthorized computer access compromising security of data
28-1346	Unauthorized access to or use of a computer to obtain confidential information, first offense
28-1347	Unauthorized access to or use of a computer, second or subsequent offense
29-739	Extradition and detainer, unlawful delivery of accused persons
29-908	Failing to appear when on bail for misdemeanor or ordinance violation
30-2602.01	Violating an ex parte order regarding a ward's or protected person's safety, health, or financial welfare
32-1536	Bribery or threats used to procure vote of another
*37-401	Violation of hunting, fishing, and fur-harvesting permits
*37-410	Obtaining or aiding another to obtain a permit to hunt, fish, or harvest fur unlawfully or by false pretenses or misuse of permit
*37-411	Hunting, fishing, or fur-harvesting without permit
*37-447	Violation of rules, regulations, and commission orders under the Game Law regarding hunting, transportation, and possession of deer
*37-449	Violation of rules and regulations under the Game Law regarding hunting antelope
*37-479	Luring or enticing wildlife into a domesticated cervine animal facility
*37-4,108	Violating commercial put-and-take fishery licensure requirements
*37-504	Unlawfully hunt, trap, or possess mountain sheep
37-509	Violations relating to hunting or harassing birds, fish, or other animals from aircraft
37-524.01	Release, kill, wound, or attempt to kill or wound a pig for amusement or profit
37-554	Use of explosives in water to remove obstructions without permission
37-555	Polluting waters of state
37-556	Polluting waters of state with carcasses
*37-573	Hunt or enable another to hunt through the Internet or host hunting through the Internet
37-809	Violation of restrictions on endangered or threatened species
*37-1254.12	Operating a motorboat or personal watercraft while under the influence of alcohol or drugs or refusing to submit to a chemical test for operating

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	a motorboat or personal watercraft while under the influence of alcohol or drugs, first offense
37-1272	Reckless or negligent operation of motorboat, water skis, surfboard, etc.
37-12,110	Violation of provisions relating to abandonment of motorboats
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
39-310	Depositing materials on roads or ditches, second offense
39-311	Placing burning materials or items likely to cause injury on highways, second offense
39-2612	Illegal location of junkyard
42-357	Knowingly violating a restraining order relating to dissolution of marriage
42-1204	False or incorrect information on application to restrict disclosure of applicant's address
43-2,107	Violation of restraining or other court order under Nebraska Juvenile Code
44-3,156	Violations of provisions permitting purchase of workers' compensation insurance by associations
44-1209	Reciprocal insurance, violations by attorney in fact
45-208	Violation of maximum rate of time-price differential, revolving charge agreements
45-343	Installment sales, failure to obtain license
45-343	Violation of Nebraska Installment Sales Act
45-747	Engaging in mortgage banking or mortgage loan originating without a license or registration
45-814	Violation of Credit Services Organization Act
45-1037	Violations regarding installment loans
46-254	Interfering with closed waterworks, taking water without authority
46-263.01	Molesting or damaging water flow measuring devices
46-807	Unlawful diversion or drainage of natural lakes
46-1119	Violation of emergency permit provisions of Nebraska Chemigation Act
46-1139	Unlawfully engaging in chemigation without a chemigation permit
46-1140	Unlawfully engaging in chemigation with a suspended or revoked chemigation permit
46-1239	Violating the licensure requirements of the Water Well Standards and Contractors' Practice Act
48-144.04	Failing, neglecting, or refusing to file reports required by Nebraska Workers' Compensation Court
48-146.03	Unlawfully requiring employee to pay deductible amount under workers' compensation policy or requiring or attempting to require employee to give up right of selection of physician

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48-147	Deducting from employee's pay for workers' compensation benefits
48-311	Violation of child labor laws
48-414	Using a machine or device or working at a location which Commissioner of Labor has labeled unsafe
48-424	Violations involving health and safety regulations
48-434	Violations of safety requirements in construction of buildings
48-645	Unlawful waiver of or deductions for unemployment compensation or discrimination in hire or tenure
48-910	Violation of laws relating to secondary boycotts
48-1714	Violation by farm labor contractor or applicant for farm labor contractor license
48-1714	Violations related to farm labor contractor licenses
48-1816	Violation of Nebraska Amusement Ride Act
48-2533	Install a conveyance in violation of the Conveyance Safety Act
50-1215	Obstruct, hinder, or mislead a legislative performance audit or preaudit inquiry
52-124	Failure to discharge construction liens, failure to apply payments for lawful claims
53-111	Nebraska Liquor Control Commission, gifts or gratuities forbidden
53-164.02	Evasion of liquor tax
53-186.01	Permitting consumption of liquor in unlicensed public places, second or subsequent offense
53-187	Nonbeverage liquor licensee giving or selling liquor fit for beverage purposes, second or subsequent offense
53-1,100	Violation of Nebraska Liquor Control Act, second or subsequent offense
54-1,125	Using false evidence of ownership of livestock
54-1,126	Violation of Livestock Brand Act when not otherwise specified
54-415	Estrays, illegal sale, disposition of proceeds
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 the Bovine Tuberculosis Act
54-706.10	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
54-750	Harboring or prohibited sale of diseased animals, first offense
54-751	Violation of rules and regulations relating to the Exotic Animal Auction or Exchange Venue Act or provisions on diseased animals and disposal of carcasses, first offense
54-752	Violation of the Exotic Animal Auction or Exchange Venue Act or provisions relating to diseased animals and disposal of carcasses, first offense
54-796	Violation of Animal Importation Act, second or subsequent offense
54-861	Violation of Commercial Feed Act, second or subsequent offense
54-1171	Violation of Livestock Auction Market Act
54-1181.01	Person engaging in livestock commerce violating veterinarian inspection provisions
54-1811	Illegal purchase of slaughter livestock
54-1913	Interference with inspection of meat and poultry, attempting to bribe

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	inspector or employee of Department of Agriculture
54-1913	Violation of Nebraska Meat and Poultry Inspection Law when not otherwise specified unless intent was to defraud
54-2288	Violation of quarantine requirements under Pseudorabies Control and Eradication Act, second or subsequent offense
54-22,100	Violation of Pseudorabies Control and Eradication Act, second or subsequent offense
54-2323	Violation of Domesticated Cervine Animal Act, second or subsequent offense
54-2761	Violation of Scrapie Control and Eradication Act, second or subsequent offense
55-142	Trespassing on place of military duty, obstructing person in military duty, disrupting orderly discharge of military duty, disturbing or preventing passage of military troops
55-175	Refusal by restaurant, hotel, or public facility to serve person wearing prescribed National Guard uniform
55-428	Code of military justice, witness failure to appear
57-915	Violation of oil and gas conservation laws
*60-3,167	Operating or allowing the operation of motor vehicle or trailer without proof of financial responsibility
*60-4,108	Operating motor vehicle in violation of court order or while operator's license is revoked or impounded, first, second, or third offense
*60-4,109	Operating motor vehicle in violation of court order or while operator's license is revoked or impounded for violation of city or village ordinance
*60-4,141.01	Operating commercial motor vehicle while operator's license is suspended, revoked, or canceled or while subject to disqualification or an out-of-service order
60-690	Aiding or abetting a violation of the Nebraska Rules of the Road
60-696	Failure of driver to stop and report a motor vehicle accident, first offense in 12 years
*60-6,130	Unlawful removal or possession of sign or traffic control or surveillance device
*60-6,130	Willfully or maliciously injuring, defacing, altering, or knocking down any sign, traffic control device, or traffic surveillance device
60-6,195	Speed competition or drag racing on highways
*60-6,217	Reckless driving or willful reckless driving, second offense
60-6,336	Snowmobile contest on highway without permission, second or subsequent offense within one year
60-6,343	Violation of provisions relating to snowmobiles, second or subsequent offense within one year
60-6,362	Violation of all-terrain vehicle requirements, second or subsequent offense within one year
60-1911	Violating laws relating to abandoned vehicles
69-408	Violation of secondary metals recycling requirements
69-1215	Willfully or knowingly engaging in business of debt management without license
69-1324	Willful failure to deliver abandoned property to the State Treasurer
69-2409.01	Intentionally causing the Nebraska State Patrol to request mental health history information without reasonable belief that the named individual

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	has submitted a written application or completed a consent form for a handgun
*69-2709	Knowing or intentional cigarette sales report, tax, or stamp violations or sales of unstamped cigarettes or cigarettes from manufacturer not in directory, second or subsequent offense
*69-2709	Knowing or intentional cigarette sales or purchases from unlicensed stamping agent or without appropriate stamp or reporting requirements, second or subsequent offense
71-962	Filing petition with false allegations or depriving a subject of rights under Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act
71-962	Willful violation involving records under Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act
71-15,141	Approve, sign, or file a local housing agency annual report which is materially false or misleading
71-1805	Sale and distribution of pathogenic microorganisms
71-2416	Violation of Emergency Box Drug Act
71-2512	Violation of provisions on poisons and adulterated or misbranded drugs when not otherwise specified, second offense
71-3213	Violation of laws pertaining to private detectives
72-245	Waste, trespass, or destruction of trees on school lands
*72-313	Violation of mineral or water rights on state lands
72-802	Violation of plans, specifications, bids, or appropriations on public buildings
75-127	Unjust discrimination or prohibited practices in rates by officers, agents, or employees of a common carrier
75-428	Failure of railroad to provide transfer facilities at intersections upon order of the Public Service Commission
75-723	Violation of laws on transmission lines
76-1722	Acting as a sales agent for real property in a time-share interval arrangement without a license
76-2114	Acting as membership camping contract salesperson without registration
76-2325.01	Interference with utility poles and wires or transmission of light, heat, power, or telecommunications, loss of at least \$200 but less than \$500 (certain situations)
77-1232	Failure to list or filing false list of personal property for tax purposes for 1993 and thereafter
77-2311	Failure or refusal to perform duties regarding deposit of state funds by State Treasurer
77-2790	Claiming excessive exemptions or overstating withholding to evade income taxes
77-27,115	Taxpayer, failure to pay, account, or keep records on income tax
77-3009	Violation of Mechanical Amusement Device Tax Act
77-3522	False or fraudulent claim for homestead exemption
79-949	False or fraudulent acts to defraud the school retirement system
79-9,107	Illegal interest in investment of school employees retirement system funds
80-405	Obtaining veterans relief by fraud
81-2,162.17	Violation of Nebraska Commercial Fertilizer and Soil Conditioner Act

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81-885.45	Acting as real estate broker, salesperson, or subdivider without license or certificate or under suspended license or certificate
81-8,254	Obstruct, hinder, or mislead Public Counsel in inquiries
81-1023	Use of improperly marked or equipped state-owned vehicle
81-1117.03	Prohibited release of state computer file data
81-1933	Truth and deception examination, unlawful use by employer
81-1935	Violation of provisions on truth and deception examinations
81-2038	False or fraudulent acts to defraud the Nebraska State Patrol Retirement System
81-3535	Unauthorized practice of geology, first offense
84-1327	False or fraudulent acts to defraud the State Employees Retirement System
85-1650	Violating private postsecondary career school provisions
86-607	Discrimination in rates by telegraph companies
86-608	Failure by telegraph companies to provide newspapers equal facilities
87-303.08	Violation of Uniform Deceptive Trade Practices Act when not otherwise specified

***Sections noted with an asterisk have additional penalty provisions**

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**Maximum—three months' imprisonment, or five hundred dollars fine, or both
Minimum—none**

2-1825	Violation of Nebraska Potato Inspection Act
2-2319	Violation of Nebraska Wheat Resources Act
2-2647	Violation of Pesticide Act, first offense
2-3008	Violation of Nebraska Poultry Disease Control Act
2-3416	Violation of Nebraska Poultry and Egg Resources Act
2-3635	Violation of Nebraska Corn Resources Act
2-3765	Violation of Dry Bean Resources Act
2-3963	Violation of Dairy Industry Development Act
2-4020	Violation of Grain Sorghum Resources Act
2-5605	Violations relating to excise taxes on grapes
3-408	Violation of provisions regulating aircraft obstructions or structures
3-504	Violation of city airport authority regulations
3-613	Violation of county airport authority regulations
4-106	Alien elected to office in labor or educational organization
7-101	Unauthorized practice of law
8-127	Violation of inspection provisions for list of bank stockholders
8-142	Bank officer, employee, director, or agent violating loan limits by \$10,000 or more but less than \$20,000 or resulting in monetary loss of less than \$10,000 to bank or no monetary loss
8-1,119	Violation of the Nebraska Banking Act when not otherwise specified
8-2745	Violation of Nebraska Money Transmitters Act, other than acting without license or intentionally falsifying records
9-230	Unlawfully conducting or awarding a prize at a bingo game, first offense
9-422	Unlawfully conducting a lottery or raffle
12-1205	Failing to report the presence and location of human skeletal remains or burial goods associated with an unmarked human burial

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13-1617	Violation of confidentiality requirements of Political Subdivisions Self-Funding Benefits Act
14-224	City council, officers, and employees receiving or soliciting gifts
14-2149	Violations relating to gas and water utilities in cities of the metropolitan class
18-305	Telephone company providing special rates to city or village officer or such officer accepting special rates
18-306	Electric company providing special rates to city or village officer
18-307	City or village officer accepting electric service at special rates
18-308	Water company providing special rates to city or village officer or such officer accepting special rates
18-1741.05	Failure to appear or comply with handicapped parking citation
18-2715	Unauthorized disclosure of confidential business information under city ordinance pursuant to Local Option Municipal Economic Development Act
19-2906	Disclosures by accountant of results of examination of municipal accounts
20-129	Interfering with rights of blind, deaf, or physically disabled persons and with admittance to or enjoyment of public facilities
20-129	Interfering with rights of a service animal trainer and with admittance to or enjoyment of public facilities
21-622	Illegal use of society emblems
23-114.05	Violation of county zoning regulations
23-135.01	False claim against county when value is less than \$100
*23-350	Failing to file or filing false or incorrect inventory statement by county officers or members of county board
28-201	Criminal attempt to commit a Class II misdemeanor
28-384	Failure to make report under Adult Protective Services Act
28-385	Wrongful release of information gathered under Adult Protective Services Act
28-403	Administering secret medicine
*28-416	Knowingly or intentionally possessing more than 1 ounce but not more than 1 pound of marijuana
28-417	Unlawful acts relating to packaging, possessing, or using narcotic drugs and other controlled substances
28-424	Inhaling or drinking certain intoxicating compounds
28-424	Selling or offering for sale certain intoxicating compounds
28-424	Selling or offering for sale certain intoxicating compounds without maintaining register for one year
28-424	Inducing or enticing another to sell, inhale, or drink certain intoxicating compounds or to fail to maintain register for one year
28-425	Use of arsenic or strychnine in embalming fluids, violations of labeling requirements
28-444	Drug paraphernalia advertisement prohibited
28-445	Manufacture or delivery of an imitation controlled substance, first offense
28-450	Unlawful sale, distribution, or transfer of ephedrine, pseudoephedrine, or phenylpropanolamine for use as a precursor to a controlled substance or with reckless disregard as to its use

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28-456.01	Purchase, receive, or otherwise acquire pseudoephedrine base or phenylpropanolamine base over authorized limits, second or subsequent offense
28-514	Theft of lost, mislaid, or misdelivered property when value is \$200 or less, first offense
28-515.02	Theft of utility service and interference with utility meter
28-516	Unauthorized use of a propelled vehicle, first offense
28-519	Criminal mischief, pecuniary loss of less than \$200
28-521	Criminal trespass in the second degree (certain situations)
28-523	Littering, first offense
*28-524	Unauthorized application of graffiti, first offense
28-606	Criminal simulation of antiquity, rarity, source, or composition
28-609	Impersonating a public servant
28-621	Criminal possession of one financial transaction device
28-633	Printing more than the last 5 digits of a payment card account number upon a receipt provided to payment card holder, first offense
28-717	Willful failure to report abused or neglected children
28-730	Unlawful disclosures by a child abuse and neglect team member
28-902	Failure to report injury of violence
28-914	Loitering about a penal institution
28-923	Simulating legal process
28-925	Misuse of official information
*28-927	Neglecting to serve warrant if offense for warrant is a misdemeanor
28-928	Mutilation of a flag of the United States or the State of Nebraska
28-1009.01	Violence on or interference with a service animal
*28-1010	Indecency with an animal
28-1209	Failure to register tranquilizer guns
28-1210	Failure to notify sheriff of sale of tranquilizer gun
28-1225	Storing explosives in violation of safety regulations
28-1226	Failure to report theft of explosives
28-1227	Violations of provisions relating to explosives
28-1240	Unlawful use of tank or container which contained anhydrous ammonia
28-1242	Unlawful throwing of fireworks
*28-1250	Violation of laws relating to fireworks
28-1251	Unlawful testing or inspection of fire alarms
*28-1303	Raising or producing stagnant water on river or stream
28-1309	Refusing to yield a telephone party line
28-1310	Intimidation by telephone call
28-1313	Unlawful use of a white cane or guide dog
28-1314	Failure to observe a blind person
28-1316	Unlawful use of locks and keys
28-1317	Unlawful picketing
28-1318	Mass picketing
28-1319	Interfering with picketing
28-1320	Intimidation of pickets
28-1320.03	Unlawful picketing of a funeral
*28-1321	Maintenance of nuisances
28-1322	Disturbing the peace
28-1331	Unauthorized use of receptacles

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28-1332	Unauthorized possession of a receptacle
*28-1335	Discharging firearm or weapon using compressed gas from public highway, road, or bridge
28-1419	Selling or furnishing tobacco or cigarette, vapor, or alternative nicotine products to minors
28-1420	Sale or purchase for resale of tobacco without license
*28-1425	Licensee selling or furnishing tobacco or cigarette, vapor, or alternative nicotine products to minors
*28-1429.02	Dispensing cigarettes or other tobacco products or vapor or alternative nicotine products from vending machines or similar devices in certain locations
*28-1429.03	Sell or distribute cigarettes, cigars, vapor products, alternative nicotine products, or tobacco in any form whatever through a self-service display
28-1438	Unlawful possession of legend drug substances
*28-1467	Operation of aircraft while under the influence of alcohol or drugs, first offense
*28-1468	Operation of aircraft while under the influence of alcohol or drugs, second offense
28-1478	Deceptive or misleading advertising
28-1479	Sale of certain beverage cans with removable tabs
*29-817	Disclosing of search warrant prior to its execution
29-835	Refusing to permit, interfering with, or preventing inspection pursuant to inspection warrant
29-4110	Unlawful possession of DNA samples or records
29-4111	Unlawful disclosure of DNA samples or records
32-1501	Interfering or refusing to comply with election requirements of Secretary of State
32-1505	Deputy registrar drinking liquor at or bringing liquor to place of voter registration
*32-1506	Theft, destruction, removal, or falsification of voter registration and election records
32-1510	Hindering voter registration
32-1511	Obstructing deputy registrars at voter registration
32-1513	Bribery involving candidate filing forms and nominating petitions
32-1515	Wrongfully or willfully suppressing election nomination papers
*32-1517	Service as election official, threat of discharge or coercion by employer
32-1519	Misconduct or neglect of duty by election official
32-1521	Printing or distribution of election ballots by other than election officials
32-1528	Voting outside of resident precinct, school district, or village
32-1549	Failing to appear or comply with citation issued under Election Act
35-520	False alarm or report of fire in rural fire protection district or area
35-801	Knowingly accepting, transferring, selling, or offering to sell or purchase firefighting clothing or equipment which does not meet standards
*37-248	Violation of Game Law when not otherwise specified
*37-314	Violation of rules, regulations, and commission orders under the Game Law regarding seasons and other restrictions on taking wildlife
37-336	Violation of provisions for state wildlife management areas
37-348	Violation of provisions for state park system
*37-406	Duplication of electronically issued license, permit, or stamp under the

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- Game Law
- *37-410 Obtaining permit to hunt, fish, or harvest fur by false pretenses or misuse of permit
 - *37-410 Receipt of fur-harvesting permit by nonresident less than 16 years old without written parental permission
 - *37-450 Violation of rules and regulations under the Game Law regarding hunting elk
 - *37-451 Violation of rules and regulations under the Game Law regarding hunting mountain sheep
 - *37-461 Violating permit to take or destroy muskrats or beavers or selling or using muskrats, beavers, or parts thereof without permit
 - 37-462 Performing taxidermy services without permit and failure to keep complete records
 - *37-501 Taking or possessing a greater number of game than allowed under the Game Law
 - *37-504 Hunting, trapping, or possessing animals or birds out of season
 - *37-504 Unlawfully taking or possessing game
 - *37-505 Unlawful purchase, sale, or barter of animals, birds, or fish or parts thereof
 - 37-507 Abandonment, waste, or failure to dispose of fish, birds, or animals
 - 37-508 Storing game or fish in cold storage after prescribed storage season or without proper tags
 - 37-510 Violating game shipment requirements
 - *37-511 Violating importation restrictions on game shipments
 - 37-512 Violating regulations relating to the shipment of raw fur
 - *37-513 Shooting at wildlife from highway
 - *37-514 Hunting wildlife with artificial light
 - *37-515 Hunting, driving, or stirring up game birds or animals with aircraft or boat
 - 37-521 Use of aircraft, vessel, vehicle, or other equipment to harass certain game animals
 - *37-522 Carrying loaded shotgun in or on vehicle on highway
 - *37-523 Unlawful hunting with a rifle within 200 yards of inhabited dwelling or livestock feedlot
 - *37-523 Unlawful hunting without a rifle or trapping within 100 yards of inhabited dwelling or livestock feedlot
 - *37-523 Unlawful trapping within 200 yards of livestock passage
 - *37-524.02 Refusal to permit inspection, decontamination, or treatment of conveyance for aquatic invasive species
 - *37-525 Taking game birds or game animals during closed season while training or running dogs
 - *37-525 Running dogs on private property without permission
 - *37-526 Unlawful use or possession of ferrets
 - 37-531 Unlawful use of explosive traps or poison gas on wild animals
 - 37-532 Setting an unmarked trap
 - *37-533 Violating restrictions on hunting fur-bearing animals and disturbing their nests, dens, and holes
 - *37-535 Hunting game from propelled boat or watercraft
 - *37-536 Hunting game birds with certain weapons

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*37-537	Baiting game birds
*37-538	Hunting game birds from vehicle
*37-539	Taking or destroying nests or eggs of game birds
*37-543	Unlawful taking of fish
*37-545	Unlawful removal of fish from privately owned pond and violations of commercial fishing permits
*37-546	Unlawful taking, use, or possession of baitfish
37-548	Release, importation, exportation, or commercial exploitation of wildlife or aquatic invasive species
37-552	Failure to maintain fish screens in good repair
37-557	Disturbing hatching boxes and nursery ponds
37-570	Knowing and intentional interference or attempt to interfere with hunting, trapping, fishing, or associated activity
37-605	Failure to appear on an alleged violation of the Game Law
*37-615	Taking wildlife or applying for permit with a suspended or revoked permit
37-703	Defacing a sign at a game reserve, bird refuge, or wild fowl sanctuary
37-705	Disturbing or otherwise violating provisions relating to reserves, sanctuaries, and closed waters
37-709	Hunting, carrying firearms, or operating a motorboat in state game refuges
*37-727	Violation of provisions for hunting, fishing, or trapping on privately owned land
37-1254.09	Refusing to submit to a preliminary breath test for operating a motorboat or personal watercraft while under the influence of alcohol or drugs
37-1289	Operation or sale of motorboat without certificate of title, failure to surrender certificate upon cancellation, deface a certificate of title
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
39-103	Operation of motor vehicle in violation of published rules and regulations of the Department of Roads
39-310	Depositing materials on roads or ditches, first offense
39-311	Placing burning materials or items likely to cause injury on highways, first offense
39-806	Destroying bridge or landmark
39-1335	Illegal use of adjoining property for access to state highway
39-1362	Digging up or crossing state highway
39-1412	Loads exceeding posted capacity on county bridges
39-1806	Refusal of access to lands for placement of snow fences, willful or malicious damage thereto
39-1810	Livestock lanes, driving livestock on adjacent highways
39-1815	Leaving gates open on road over private property
43-257	Detaining or placing a juvenile in violation of certain Nebraska Juvenile Code provisions

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43-709	Illegal placement of children
43-1310	Unauthorized disclosure of confidential information regarding foster children and their parents or relatives
43-1414	Violation of genetic paternity testing provisions, second or subsequent offense
43-3001	Public disclosure of confidential information received concerning a child who is or may be in state custody
43-3327	Unauthorized disclosure or release of confidential information regarding a child support order
43-3714	Violation of confidentiality provisions of Court Appointed Special Advocate Act
44-394	Violation of Chapter 44 when not otherwise specified
44-530	Violation of Standardized Health Claim Form Act
*44-1113	Violation of Viatical Settlements Act
44-3721	Violation of Motor Club Services Act
44-5508	Surplus lines licensee placing coverage with a nonadmitted insurer or placing nonadmitted insurance with or procuring nonadmitted insurance from a nonadmitted insurer
45-601	Operating a collection agency business without a license or violation of Collection Agency Act
45-740	Residential mortgage loan violations by licensee
45-1023	Making a false statement to secure a loan
46-263	Neglecting or preventing delivery of irrigation water
46-1142	Failure to provide notice of a chemigation accident
46-1240	Engaging in business or employing another without complying with standards under Water Well Standards and Contractors' Practice Act
48-213	Employment regulations, violation of lunch hour requirements
48-216	Discrimination in employment by manufacturer or distributor of military supplies
*48-511	Employment agencies splitting fees with employers
*48-513	Violation of private employment agency provisions when not otherwise specified
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
48-614	Contumacy or disobedience to subpoenas in unemployment compensation proceedings
48-663	False statements or failure to disclose information by employees to obtain unemployment compensation benefits
48-664	False statements by employers to obtain unemployment compensation benefits
48-666	Violation of Employment Security Law when not otherwise specified
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
48-1118	Unlawful disclosure of information under Nebraska Fair Employment Practice Act
48-1123	Interference with Equal Opportunity Commission in performance of duty

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CLASS III MISDEMEANOR

	under Nebraska Fair Employment Practice Act
48-1227	Discrimination on the basis of sex
49-231	Failure of state, county, or political subdivision officer to furnish information required by constitutional convention
49-1447	Campaign practices, violation by committee treasurer or candidate in statements or reports
49-1461.01	Ballot question committee violating surety bond requirements
49-1469.08	Violation of campaign practices by businesses and organizations in contributions, expenditures, and volunteer services
49-1471	Campaign contribution or expenditure in excess of \$50 made in cash
49-1472	Campaign practices, acceptance of anonymous contribution
49-1473	Campaign practices, legal name of contributor required
49-1474	Campaign practices, political newsletter or mass mailing sent at public expense
49-1475	Campaign practices, failing to disclose name and address of contributor
49-1476.02	Accepting or receiving a campaign contribution from a state lottery contractor
49-1477	Campaign practices, required information on contributions from persons other than committees
49-1478	Campaign practices, violation of required reports on expenditures
49-1479	Campaign practices, unlawful contributions or expenditures made for transfer to candidate committee
49-1479.01	Violations related to earmarked campaign contributions
49-1490	Prohibited acts relating to gifts by principals or lobbyists
49-1492	Prohibited practices of a lobbyist
49-1492.01	Violation of gift reporting requirements by certain entities
49-14,101	Conflicts of interest, prohibited acts of public official, employee, candidate, and other individuals
49-14,101.01	Public official or employee using office, confidential information, personnel, property, or funds for financial gain or improperly using public communication system or public official or immediate family member accepting gift of travel or lodging if made for immediate family member to accompany the public official
49-14,103.04	Knowing violation of conflict of interest prohibitions
49-14,104	Official or full-time employee of executive branch representing a person or acting as an expert witness
49-14,115	Unlawful disclosure of confidential information by member or employee of Nebraska Accountability and Disclosure Commission
49-14,135	Violation of confidentiality of proceedings of Nebraska Accountability and Disclosure Commission
50-1213	Divulging confidential information or records relating to a legislative performance audit or preaudit inquiry
53-167.02	Violations relating to beer keg identification numbers
53-167.03	Tamper with, alter, or remove beer keg identification number or possess beer container with altered or removed keg identification number
53-180.05	Misrepresentation of age by minor to obtain or attempt to obtain alcoholic liquor
53-180.05	Minor over 18 years old and under 21 years old in possession of alcoholic liquor

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CLASS III MISDEMEANOR

53-180.05	Parent or guardian knowingly permitting minor to violate alcoholic liquor laws
*53-181	Minor 18 years old or younger in possession of alcoholic liquor
53-186.01	Consumption of liquor in unlicensed public places
54-796	Violation of Animal Importation Act, first offense
*54-904	Indecency with a livestock animal
54-1408	Violations when sheep are infected with scabies
54-1711	Livestock dealer violating provisions of Nebraska Livestock Dealer Licensing Act
*54-1913	Meat and poultry inspector, officer, or employee accepting bribes
54-2288	Violation of quarantine requirements under Pseudorabies Control and Eradication Act, first offense
57-507	Unlawful use of liquefied petroleum gas cylinders
57-1106	Willfully and maliciously breaking, injuring, damaging, or interfering with oil or gas pipeline, plant, or equipment
60-142	Using a bill of sale for a parts vehicle to transfer ownership of any vehicle other than a parts vehicle
60-180	Prohibited acts relating to certificates of title for motor vehicles, all-terrain vehicles, or minibikes
60-3,113.07	Knowingly provide false information on an application for a handicapped or disabled parking permit
60-3,170	Violation of Motor Vehicle Registration Act when not otherwise specified
60-3,171	Fraud in registration of motor vehicle or trailer
60-3,176	Disclosure of information regarding undercover license plates to unauthorized individual
60-3,206	Violation of International Registration Plan Act
60-480.01	Disclosure of information regarding undercover drivers' licenses to unauthorized individual
*60-4,108	Operating motor vehicle while operator's license is suspended or after revocation or impoundment but before licensure
*60-4,109	Operating motor vehicle while operator's license is suspended or after revocation or impoundment but before licensure for violation of city or village ordinance
60-4,111	Violation of Motor Vehicle Operator's License Act when not otherwise specified
60-4,118	Failure to surrender operator's license or appear before examiner regarding determination of physical or mental competence
60-4,140	Commercial driver, multiple operators' licenses
60-4,141	Operation of commercial motor vehicle outside operator's license or permit classification
*60-4,146.01	Violation of privileges conferred by commercial drivers' licenses
60-4,159	Commercial driver, failure to provide notifications relating to conviction or disqualification
60-4,161	Commercial driver, failure to provide information to prospective employer
60-4,162	Employer failing to require information or allowing commercial driver to violate highway-rail grade crossing, out-of-service order, or licensing provisions

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60-4,170	Failure to surrender commercial driver's license or CLP-commercial learner's permit
60-4,179	Violation of driver training instructor or school provisions
60-4,184	Failure to surrender operator's license for loss of license under point system
*60-4,186	Illegal operation of motor vehicle under period of license revocation for loss of license under point system
60-558	Failure to return motor vehicle license or registration to Department of Motor Vehicles for violation of financial responsibility provisions
60-560	Violation of Motor Vehicle Safety Responsibility Act when not otherwise specified
60-678	Operation of vehicles in certain public places where prohibited, where not permitted, without permission, or in a dangerous manner
60-690	Aiding or abetting a violation of the Nebraska Rules of the Road
60-6,110	Failing to obey lawful order of law enforcement officer given under Nebraska Rules of the Road to apprehend violator
60-6,130	Willful damage or destruction of road signs, monuments, traffic control or surveillance devices by shooting upon highway
60-6,211.11	Operating a motor vehicle with an ignition interlock device in violation of court order or Department of Motor Vehicles order unless otherwise specified
60-6,215	Reckless driving, first offense
*60-6,216	Willful reckless driving, first offense
*60-6,222	Violations in connection with headlights and taillights
60-6,228	Vehicle proceeding forward on highway with backup lights on
*60-6,234	Violations involving rotating or flashing lights on motor vehicles
*60-6,235	Violation of vehicle clearance light requirements
*60-6,245	Violation of motor vehicle brake requirements
60-6,259	Application of an illegal sunscreening or glazing material on a motor vehicle
60-6,263	Operating or owning vehicle in violation of safety glass requirements
60-6,291	Exceeding limitations on width, length, height, or weight of motor vehicles when not otherwise specified
60-6,299	Violation of or failure to obtain permit to move building or other object on highway
60-6,303	Refusal to weigh vehicle or lighten load
60-6,336	Snowmobile contest on highway without permission, first offense within one year
60-6,343	Violation of provisions relating to snowmobiles, first offense within one year
60-6,352	Illegal operation of minibikes on state highway
60-6,353	Operating a minibike in a place, at a time, or in a manner not permitted by regulatory authority
60-6,362	Violation of all-terrain vehicle requirements, first offense within one year
60-1307	Failing to appear at hearing for violations discovered at weigh stations
60-1308	Failure to comply with weigh station requirements
60-1309	Resisting arrest or disobeying order of carrier enforcement officer at weigh station
60-1418	Violating conditions of a motor vehicle sale

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CLASS III MISDEMEANOR

62-304	Limitation upon negotiation of tuition notes or contracts of business colleges
64-105.03	Unauthorized practice of law by notary public
66-107	Illegal use of containers for gasoline or kerosene
66-1345.03	Failure to administer and keep records of excise tax on corn and grain sorghum under Ethanol Development Act
68-314	Unlawful use and disclosure of books and records of Department of Health and Human Services
68-1017	Obtaining through fraud assistance to aged, blind, or disabled persons, aid to dependent children, or supplemental nutrition assistance program benefits when value is less than \$500
68-1017.01	Unlawful use, alteration, or transfer of supplemental nutrition assistance program benefits when value is less than \$500
68-1017.01	Unlawful possession or redemption of supplemental nutrition assistance program benefits when value is less than \$500
69-2012	Violation of Degradable Products Act
*69-2443	Carrying concealed handgun at prohibited site or while under the influence, first offense
*69-2443	Failure to report discharge of concealed handgun, first offense
*69-2443	Failure to carry or display concealed handgun permit, first offense
*69-2443	Failure to inform peace officer of concealed handgun, first offense
69-2709	Selling, possessing, or distributing cigarettes in violation of stamping requirements
71-220	Violation of barbering provisions
71-506	Willful or malicious disclosure of confidential reports, notifications, and investigations relating to communicable diseases
71-542	Unauthorized disclosure of confidential immunization information
71-613	Violation of provisions on vital statistics
71-1371	Violation of the Cremation of Human Remains Act
71-1631.01	Violating regulation for protecting public health and preventing communicable diseases
71-1905	Violations regarding children in foster care
71-2228	Illegal receipt of food supplement benefits when value is less than \$500
71-2229	Using, altering, or transferring food instruments or food supplements when value is less than \$500
71-2229	Illegal possession or redemption of food supplement benefits when value is less than \$500
71-2512	Violation involving poisons and adulterated or misbranded drugs when not otherwise specified, first offense
71-4632	Mobile home parks established, conducted, operated, or maintained without license, nuisance
71-6741	Violation of the Medication Aide Act
71-6907	Performing an abortion in violation of parental consent provisions, knowingly and intentionally or with reckless disregard
71-6907	Unauthorized person providing consent for an abortion
71-6907	Coercing a pregnant woman to have an abortion
74-609.01	Hunting on railroad right-of-way without permission
74-1331	Failure to construct, maintain, and repair railroad bridges in compliance with law

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CLASS III MISDEMEANOR

75-114	Refusal to allow access to the Public Service Commission to records of a motor or common carrier
75-367	Violation of motor carrier safety regulations or hazardous materials regulations
76-505	Judges and other county officers engaging in business of abstracting
76-558	Unlawful practice in business of abstracting
76-2246	Unlawful practice as a real property appraiser
76-2325.01	Interference with utility poles and wires or transmission of light, heat, power, or telecommunications, loss of less than \$200 (certain situations)
77-1719.02	Violations by county board members regarding collection of personal taxes and false returns
77-2619	Fail, neglect, or refuse to report or make false statement regarding cigarette taxation
77-3407	Unlawful signature on budget limitation petition
79-210	Violation of compulsory school attendance provisions
79-603	School vehicles, violation of safety requirements and operating school vehicles which violate safety requirements when not otherwise specified
79-727	Violation of character education requirements
79-897	Illegal inquiries concerning religious affiliation of teacher applicants
79-8,101	Illegal solicitation of business from classroom teachers
79-1607	Violation of laws on private, denominational, and parochial schools
81-2,157	Unlawful sale or marking of hybrid seed corn
81-2,179	Violation of Nebraska Apiary Act
81-513	Violation of order of State Fire Marshal directing the closing of a building pending repair
81-829.41	Unauthorized release of information from emergency management registry
81-8,127	Unlawful practice of land surveying or use of title
81-8,142	Violation of provisions relating to the State Athletic Commissioner
81-8,205	Unlawful practice as a professional landscape architect
81-1508.01	Knowing and willful violation of Environmental Protection Act, Integrated Solid Waste Management Act, or Livestock Waste Management Act when not otherwise specified
81-2008	Failure to obey rules or orders of or resisting arrest by Nebraska State Patrol
82-111	Destroy, deface, remove, or injure monuments marking Oregon Trail
82-507	Knowingly and willfully appropriate, excavate, injure, or destroy any archaeological resource on public land without written permission from the State Archaeology Office
82-508	Enter or attempt to enter upon the lands of another without permission and intentionally appropriate, excavate, injure, or destroy any archaeological resource or any archaeological site
84-311	Disclosure of restricted information by the Auditor of Public Accounts or an employee of the auditor
84-712.09	Violation of provisions for access to public records
84-1213	Mutilation, transfer, removal, damage, or destruction of or refusal to return government records
84-1414	Unlawful action by members of public bodies in public meetings, second or subsequent offense

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CLASS III MISDEMEANOR

- 86-290 Intercepting or interfering with certain wire, electronic, or oral communication
- 86-606 Unlawful delay or disclosure of telegraph dispatches
- 89-1,101 Violation of Weights and Measures Act or order of Department of Agriculture, first offense
- 90-104 Use of state banner as advertisement or trademark

***Sections noted with an asterisk have additional penalty provisions**

CLASS IIIA MISDEMEANOR

**Maximum—seven days' imprisonment, five hundred dollars fine, or both
Minimum—none**

- *28-416 Knowingly or intentionally possessing one ounce or less of marijuana or any substance containing a quantifiable amount of a material, compound, mixture, or preparation containing any quantity of synthetically produced cannabinoids, third or subsequent offense
- *54-623 Owning a dangerous dog within 10 years after conviction of violating dangerous dog laws
- *54-623 Dangerous dog attacking or biting a person when owner of dog has a prior conviction for violating dangerous dog laws
- 60-690 Aiding or abetting a violation of the Nebraska Rules of the Road
- 60-6,196.01 Driving under the influence with a prior felony DUI conviction
- 60-6,275 Operating or possessing radar transmission device while operating motor vehicle
- 60-6,378 Failure to move over, proceed with due care and caution, or follow officer's directions when passing a stopped emergency or road assistance vehicle, second or subsequent offense
- 77-2704.33 Failure of a contractor or taxpayer to pay certain sales taxes of less than \$300
- 79-1602 Transmitting or providing for transmission of false school information when electing not to meet school accreditation or approval requirements
- 89-1,107 Use of a grain moisture measuring device which has not been tested
- 89-1,108 Violation of laws on grain moisture measuring devices

***Sections noted with an asterisk have additional penalty provisions**

CLASS IV MISDEMEANOR

**Maximum—no imprisonment, five hundred dollars fine
Minimum—one hundred dollars fine**

- 2-220.03 Failure to file specified security or certificates by carnival companies, booking agencies, or shows for state and county fairs
- 2-957 Unlawful movement of article through which noxious weeds may be disseminated
- 2-963 Violation of provisions relating to weed control
- 2-10,115 Specified violations of Plant Protection and Plant Pest Act, first offense
- 2-1207 Knowingly aiding or abetting a minor to make a parimutuel wager
- 2-1806 Engaging in business as a potato shipper without a license
- 2-1807 Failure by potato shipper to file statement or pay tax
- 2-3109 Violation of Nebraska Soil and Plant Analysis Laboratory Act when not otherwise specified

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CLASS IV MISDEMEANOR

2-3223.01	Failure to file audit of natural resources district
2-3524	Violation of Nebraska Graded Egg Act
2-4327	Violation of Agricultural Liming Materials Act, second or subsequent offense
3-330	Violation of Airport Zoning Act
9-513	Violation of Nebraska Small Lottery and Raffle Act, first offense
9-814	Purchase of state lottery ticket by person less than 19 years old
12-512.07	Violations in administering perpetual care trust funds for cemeteries
12-617	Violation relating to perpetual care trust funds for public mausoleums and other burial structures
12-1115	Failure to surrender a license under the Burial Pre-Need Sale Act
14-415	Violation of building ordinance or regulations in city of the metropolitan class, first or second offense
19-1847	Violation of Civil Service Act
20-149	Failure of consumer reporting agency to provide reports to consumers
23-387	Violation of provisions relating to community antenna television service
*23-919	Violation of County Budget Act of 1937
23-1507	Failure of register of deeds to perform duties
23-1821	Failure to notify coroner of a death during apprehension or while in custody
25-1563	Attachment or garnishment procedure used to avoid exemption laws
25-1640	Penalizing employee due to jury service
28-410	Failure to comply with inventory requirements by manufacturer, distributor, or dispenser of controlled substances
*28-416	Knowingly or intentionally possessing one ounce or less of marijuana or any substance containing a quantifiable amount of a material, compound, mixture, or preparation containing any quantity of synthetically produced cannabinoids, second offense
28-456.01	Purchase, receive, or otherwise acquire pseudoephedrine base or phenylpropanolamine base over authorized limits, first offense
28-462	Knowingly fail to submit methamphetamine precursor information to the National Precursor Log Exchange administered by the National Association of Drug Diversion Investigators or knowingly submit incorrect information to the exchange
28-1009	Harassment of police animal not resulting in death of animal
28-1019	Violation of court order related to misdemeanor animal abuse conviction
28-1104	Promoting gambling in the third degree
28-1253	Distribution, sale, or use of refrigerants containing liquefied petroleum gas
28-1304	Putting carcass or filthy substance in well or running water
28-1357	Distribute or sell a novelty lighter without a child safety feature
28-1405	Failure to acquire locksmith registration certificate
29-3527	Unlawful access to or dissemination of criminal history record information
32-1507	Elections, false representation of political party affiliation
32-1517	Refusing to serve as election official
32-1520	Printing or distribution of illegal ballots
32-1547	Elections, filing for more than one elective office
36-213.01	Unlawful assignment or notice of assignment of wages of head of family

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CLASS IV MISDEMEANOR

37-403	Violation of farm or ranch land hunting permit exemption
*37-463	Dealing in raw furs without fur buyer's permit, failure to keep complete records of furs bought or sold
37-471	Violation relating to aquatic organisms raised under an aquaculture permit
37-482	Keeping wild birds or animals in captivity without permit
*37-4,103	Unlawfully taking, maintaining, or selling raptors
37-524	Importation, possession, or release of certain wild or nonnative animals or aquatic invasive species
37-528	Administering a drug to wildlife
37-558	Placing harmful matter into waters stocked by Game and Parks Commission
37-1238.02	Failure of vessel to comply with order of officer to stop
37-1271	Violation of certain provisions of State Boat Act
39-302	Failure to properly equip certain sprinkler irrigation systems with endgun
43-1414	Violation of genetic paternity testing provisions, first offense
44-3,142	Unauthorized release of relevant insurance information relating to motor vehicle theft or insurance fraud
44-10,108	Soliciting membership for a fraternal benefit society not licensed in this state
44-2615	Acting as insurance consultant without license
45-101.07	Lender imposing certain conditions on mortgage loan escrow accounts
46-613.02	Violations of registration and spacing requirements for water wells; illegal transfer of ground water
46-687	Withdrawing or transferring ground water in violation of Industrial Ground Water Regulatory Act
46-1127	Placing chemical in irrigation distribution system without complying with law
46-1143	Violation of Nebraska Chemigation Act when not otherwise specified
46-1666	Willfully obstruct, hinder, or prevent Department of Natural Resources from performing duties under Safety of Dams and Reservoirs Act
48-219	Contracting to deny employment due to relationship with labor organization
48-230	Violation of provisions allowing preference to veterans seeking employment
48-433	Failure of architect to comply with law in preparing building plans
48-1206	Minimum wage rate violations
48-1505	Violations relating to sheltered workshops
48-2211	Violating recruiting restrictions related to non-English-speaking persons
49-1445	Violation of requirement to form candidate committee upon raising, receiving, or expending more than five thousand dollars in a calendar year
49-1446	Violations relating to campaign committee funds
49-1467	Failure to report campaign expenditure of more than \$250
49-1474.01	Violation of distribution requirements for political material
53-149	Providing false information regarding alcohol retailer's accounts with alcoholic liquor wholesale licensee in connection with sale of retailer's business
53-186.01	Permitting consumption of liquor in unlicensed public places, first

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CLASS IV MISDEMEANOR

	offense
53-187	Nonbeverage liquor licensee giving or selling liquor fit for beverage purposes, first offense
53-194.03	Importation of alcohol for personal use in certain quantities
53-1,100	Violation of Nebraska Liquor Control Act, first offense
54-315	Leaving well or pitfall uncovered, failure to decommission inactive well
54-613	Allowing dogs to run at large, damage property, injure persons, or kill animals
54-622	Violation of restrictions on dangerous dogs
*54-726.04	Importing diseased swine without permit
54-753.04	Unlawful feeding of garbage to animals
54-861	Violation of Commercial Feed Act, first offense
54-861	Improper use of trade secrets in violation of Commercial Feed Act
54-909	Violating court order not to own or possess a livestock animal after the date of conviction for indecency with a livestock animal, first offense
	cruel mistreatment of an animal, or intentionally, knowingly, or recklessly abandoning or cruelly neglecting livestock animal not resulting in serious injury or illness or death of the livestock animal
54-1371	Failure by owner to carry out brucellosis testing responsibilities
54-1377	Diversion of livestock from particular destination without permission or removing or altering livestock identification for such purposes
54-1384	Violation of Nebraska Bovine Brucellosis Act when not otherwise specified
54-1411	Violation of provisions relating to animals with scabies when not otherwise specified
54-1605	Violation of accreditation provisions for specific pathogen-free swine
54-22,100	Violation of Pseudorabies Control and Eradication Act, first offense
54-2323	Violation of Domesticated Cervine Animal Act, first offense
*54-2612	Unlawful sale of swine by packer
54-2615	False reporting of swine by packer
*54-2622	Unlawful sale of cattle by packer
54-2625	False reporting of cattle by packer
54-2761	Violation of Scrapie Control and Eradication Act, first offense
*55-165	Discriminating against an employee who is a member of the reserve military forces
*55-166	Discharging employee who is a member of the National Guard or armed forces of the United States for military service
57-516	Violation of provisions relating to sale of liquefied petroleum gas
57-719	Violating or aiding and abetting violations of oil and gas severance tax laws
57-1213	Failure or refusal to make uranium severance tax return or report
60-3,168	Failure to have and keep liability insurance or other proof of financial responsibility on motor vehicle
*60-3,169	Unauthorized use of vehicle registered as farm truck
60-3,172	Registration of motor vehicle or trailer in location other than that authorized by law
60-3,173	Improper increase of gross weight or failure to pay registration fee on commercial trucks and truck-tractors
*60-3,174	Improper use of a vehicle with a special equipment license plate

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CLASS IV MISDEMEANOR

60-4,129	Violation involving use of an employment driving permit
60-4,130	Failure to surrender an employment driving permit
60-4,130.01	Violation involving use of a medical hardship driving permit
60-690	Aiding or abetting a violation of the Nebraska Rules of the Road
60-6,175	Improperly passing a school bus with warning signals flashing or stop signal arm extended
60-6,197.01	Failure to report unauthorized use of immobilized vehicle
60-6,292	Violation of requirements for extra-long vehicle combinations
60-6,302	Unlawful repositioning fifth-wheel connection device of truck-tractor and semitrailer combination
60-6,304	Operation of vehicle improperly constructed or loaded or with cargo or contents not properly secured
*60-6,304	Spilling manure or urine from an empty livestock vehicle in a city of the metropolitan class
60-1407.02	Unauthorized use of sales tax permit relating to sale of vehicle or trailer
*63-103	Printing copies of a publication in excess of the authorized quantity
66-495.01	Unlawfully using or selling diesel fuel or refusing an inspection
66-6,115	Fueling a motor vehicle with untaxed compressed fuel
66-727	Failure to obtain license as required under motor fuel tax laws
66-727	Failure to produce motor fuel license or permit for inspection
66-1521	Sell, distribute, deliver, or use petroleum as a producer, refiner, importer, distributor, wholesaler, or supplier without a license
69-1808	Violation of American Indian Arts and Crafts Sales Act
*69-2709	Knowing or intentional cigarette sales report, tax, or stamp violations or sales of unstamped cigarettes or cigarettes from manufacturer not in directory, first offense
*69-2709	Knowing or intentional cigarette sales or purchases from unlicensed stamping agent or without appropriate stamp or reporting requirements, first offense
71-1563	Modular housing unit sold or leased without official seal
71-1613	Violation of provisions relating to district health boards
71-1914.03	Providing unlicensed child care when a license is required
71-2096	Interfere with enforcement of provisions relating to health care facility receivership proceedings
71-3517	Violation of Radiation Control Act
71-4632	Mobile home parks established, conducted, operated, or maintained without license
71-5312	Violation of Nebraska Safe Drinking Water Act
71-5407	Violation of Nebraska Drug Product Selection Act or rules and regulations under the act
*71-5733	Smoking in place of employment or public place, second or subsequent offense
71-5733	Proprietor violating Nebraska Clean Indoor Air Act, second or subsequent offense
*71-5870	Engaging in activity prohibited by the Nebraska Health Care Certificate of Need Act
71-8711	Disclose actions, decisions, proceedings, discussions, or deliberations of patient safety organization meeting
73-105	Violation of laws on public lettings

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CLASS IV MISDEMEANOR

- *74-1323 Failure to comply with order by Public Service Commission to store or park railroad cars safe distance from crossing
- 75-117 Refusal to comply with an order of the Public Service Commission by a motor or common carrier
- 75-155 Knowing and willful violation of Chapter 75 or 86 when not otherwise specified
- 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
- 75-426 Failure to file report of railroad accident
- 77-1232 Failure to list or filing false list of personal property for tax purposes prior to 1993
- 77-1324 False statement of assessment of public improvements
- 77-2026 Receipt by inheritance tax appraiser of extra fee or reward
- 77-2350.02 Failure to perform duties relating to deposit of public funds by school district or township treasurer
- 77-2713 Violation of laws relating to sales and use taxes when not otherwise specified
- 77-3709 Violation of reporting and permit requirements for mobile homes
- 81-2,147.09 Violation of Nebraska Seed Law
- 81-2,154 Violation of state-certified seed laws
- 81-2,290 Violation of Nebraska Pure Food Act
- 81-520.02 Violation of open burning ban or range-management burning permit
- 81-5,131 Violation of provisions relating to arson information
- 81-674 Wrongful disclosure of confidential data from medical record and health information registries or deceitful use of such information
- 81-1525 Failure or refusal to remove accumulation of junk
- 81-1559 Failure of manufacturer or wholesaler to obtain litter fee license
- 81-1560.01 Failure of retailer to obtain litter fee license
- 81-1577 Failure to register hazardous substances storage tanks
- 81-1626 Lighting and thermal efficiency violations
- 84-1414 Unlawful action by members of public bodies in public meetings, first offense
- 86-162 Failure to provide telephone services

***Sections noted with an asterisk have additional penalty provisions**

CLASS V MISDEMEANOR

Maximum—no imprisonment, one hundred dollars fine

Minimum—none

- 2-219 Conducting indecent shows or exhibits or gambling at state, district, or county fairs
- 2-220 State, district, and county fairs, refusal or failure to remove illegal devices
- 2-3292 Conducting recreational activities outside of designated areas in a natural resources district recreation area
- 2-3293 Smoking and use of fire or fireworks in a natural resources district recreation area

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CLASS V MISDEMEANOR

2-3294	Pets or other animals in a natural resources district recreation area
2-3295	Hunting, fishing, trapping, or using weapons in a natural resources district recreation area
2-3296	Conducting prohibited water-related activities in a natural resources district recreation area
2-3297	Destruction or removal of property, constructing a structure, or trespassing in a natural resources district recreation area
2-3298	Abandoning vehicle in a natural resources district recreation area
2-3299	Unauthorized sale or trading of goods in a natural resources district recreation area
2-32,100	Violation of traffic rules in a natural resources district recreation area
2-3974	Violation of Nebraska Milk Act or impeding or attempting to impede enforcement of the act
2-4327	Violation of Agricultural Liming Materials Act, first offense
7-111	Practice of law by certain judges, clerks, sheriffs, or other officials
8-113	Unauthorized use of the word "bank"
8-114	Unauthorized conduct of banking business
8-226	Unauthorized use of the words "trust", "trust company", "trust association", or "trust fund"
8-305	Unauthorized use of "building and loan" or "savings and loan" or any combination of such words in corporate name
8-829	Collecting certain charges on personal loans by banks and trust companies
13-510	Illegal obligation of funds in county budget during emergency
16-230	Violation of ordinances regulating drainage, litter, and growth of grass, weeds, and worthless vegetation
17-563	Violation of ordinances regulating drainage, litter, and growth of grass, weeds, and worthless vegetation
18-312	Cities, villages, and their officers entering into compensation contracts contingent upon elections
21-1306	Unauthorized use of the word "cooperative"
21-1728	Unlawful use of the words "credit union" or representing oneself or conducting business as a credit union
23-808	Operating pool or billiard hall or bowling alley outside of municipality without a county license
23-813	Operating roadhouse, dance hall, carnival, show, amusement park, or other place of public amusement outside of municipality without a county license
23-817	Violation of law regulating places of amusement
23-1612	Audit of county offices, refusal to exhibit records
24-216	Clerk of Supreme Court, fees, neglect or fraud in report
28-3,107	Intentional or reckless falsification of report required under the Pain-Capable Unborn Child Protection Act
28-725	Unauthorized release of child abuse or neglect information
28-1018	Selling puppy or kitten under 8 weeks old without its mother
28-1305	Putting carcass or putrid animal substance in a public place
28-1306	Railroads bringing unclean stock cars into state
28-1308	Watering livestock at private tank without permission
28-1347	Unauthorized access to or use of a computer, first offense

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CLASS V MISDEMEANOR

*28-1418	Smoking or other use of tobacco by minors or use of vapor or other alternative nicotine products by minors
28-1427	Minor misrepresenting age to obtain tobacco or cigarette, vapor, or alternative nicotine products
28-1472	Failure to submit to preliminary breath test for operation of aircraft while under influence of alcohol or drugs
28-1483	Sale of certain donated food
31-435	Neglect of duty by officers of drainage districts
32-228	Failure to serve as an election official in counties having an election commissioner
32-236	Failure to serve as an election official in counties that do not have an election commissioner
32-241	Taking personnel actions against employee serving as an election official
32-1523	Obstructing entrance to polling place
32-1524	Electioneering by election official
32-1524	Electioneering or soliciting at or near polling place
32-1525	Exit interviews with voters near polling place on election day
32-1527	Voter voting ballot, unlawful acts
32-1535	Unlawful removal of ballot from polling place
33-132	Failure or neglect to charge, keep current account of, report, or pay over fees by any officer
37-305	Violation of rules and regulations for camping areas
37-306	Violation of rules and regulations for fire safety
37-307	Violation of rules and regulations for animals on state property
37-308	Violation of rules and regulations for hunting, fishing, trapping, and use of weapons on state property
37-309	Violation of rules and regulations for water-related recreational activities on state property
37-310	Violation of rules and regulations for real and personal property on state property
37-311	Violation of rules and regulations for vendors on state property
37-313	Violation of rules and regulations for traffic on state property under Game and Parks Commission jurisdiction
37-321	Fishing violation in emergency created by drying up of waters
37-349	Use of state park name for commercial purposes
*37-428	Obtaining habitat stamps, aquatic habitat stamps, or migratory waterfowl stamps by false pretenses or misuse of stamps
*37-433	Violation of provisions on habitat stamps or aquatic habitat stamps
*37-443	Entry by a motor vehicle to a park permit area without a valid park permit
37-476	Violation of aquaculture provisions
37-504	Unlawfully taking, possessing, or destroying certain birds, eggs, or nests
37-527	Failure to display required amount of hunter orange material when hunting
37-541	Kill, injure, or detain carrier pigeons or removing identification therefrom
37-553	Violation by owner of dam to maintain water flow for fish
37-609	Resisting officer or employee of the Game and Parks Commission
37-610	Falsely representing oneself as officer or employee of the Game and

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CLASS V MISDEMEANOR

	Parks Commission
37-728	False statements about fishing on privately owned land
37-1270	Violation of State Boat Act when not otherwise specified
37-12,107	Destroy, deface, or remove any part of unattended or abandoned motorboat
39-221	Illegal advertising outside right-of-way on state highways
*39-301	Injuring or obstructing public roads
*39-303	Injuring or obstructing sidewalks or bridges
39-304	Injuring roads, bridges, gates, milestones, or other fixtures
39-305	Plowing up public highway
39-306	Willful neglect of duty by road overseer or other such officer
39-307	Building barbed wire fence which obstructs highway without guards
39-308	Failure of property owner to remove plant which obstructs view of roadway within 10 days after notice
*39-312	Illegal camping on highways, roadside areas, or parks unless designated as campsites or violating camping regulations
39-313	Hunting on freeway or private land without permission
39-808	Unlawful signs or advertising on bridges or culverts
39-1012	Illegal location of rural mail boxes
39-1801	Removing or interfering with barricades on county and township roads
39-1816	Illegal parking of vehicles on county road right-of-way
42-918	Unlawful disclosure of confidential information under Protection from Domestic Abuse Act
44-361.02	Insurance agent obtaining license or renewal to circumvent rebates
46-266	Owner allowing irrigation ditches to overflow on roads
46-282	Wasting artesian water
46-1666	Violation of Safety of Dams and Reservoirs Act or any application approval, approval to operate, order, rule, regulation, or requirement of the department under the act
47-206	Neglect of duty by municipal jailer
48-222	Unlawful cost to applicant for medical examination as condition of employment
48-237	Prohibited uses of social security numbers by employers
48-442	Violation involving high voltage lines
48-1227	Discriminatory wage practices based on sex, failing to keep or falsifying records, interfering with enforcement
48-2533	Knowing violation of the Conveyance Safety Act
49-211	Failure of election officers to make returns on adoption of constitutional amendment
49-14,103.04	Negligent violation of conflict of interest prohibitions
51-109	Illegal removal of books from State Library
53-197	Neglect or refusal of sheriffs or police officers to make complaints against violators of liquor laws
54-302	Driving off livestock belonging to another
*54-306	Driving cattle, horses, or sheep across private lands causing injury
54-7,104	Failure to take care of livestock during transport
54-1523	Misrepresentation of hogs as having had double inoculation against cholera
59-1503	Unlawful acts by retailers or wholesalers in sales of cigarettes

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CLASS V MISDEMEANOR

60-196	Failure to retain a true copy of an odometer statement for five years
60-3,135.01	Unlawful ownership or operation of a motor vehicle with special interest motor vehicle license plates
*60-3,166	Dealer, prospective buyer, or finance company operating motor vehicle or trailer without registration, transporter plate, or manufacturer plates and failing to keep records
60-3,175	Violation of registration and use provisions relating to historical vehicles
60-4,164	Refusal of commercial driver to submit to preliminary breath test for driving under the influence of alcohol
60-690	Aiding or abetting a violation of the Nebraska Rules of the Road
60-699	Failure to report vehicle accident or give correct information
60-6,197.04	Refusal to submit to preliminary breath test for driving under the influence of alcohol
60-6,211.05	Failure by ignition interlock service facility to notify probation office, court, or DMV of evidence of tampering with or circumvention of an ignition interlock device
60-6,224	Failure to dim motor vehicle headlights
60-6,239	Failure to equip or display motor vehicles required to have clearance lights, flares, reflectors, or red flags
60-6,240	Willful removal of red flags or flares before driver of vehicle is ready to proceed
60-6,247	Operation of buses or trucks without power brakes, auxiliary brakes, or standard booster brake equipment
60-6,248	Selling hydraulic brake fluid that does not meet requirements
60-6,258	Owning or operating a motor vehicle with illegal sunscreening or glazing material on windshield or windows
60-6,266	Sale of motor vehicle which does not comply with occupant protection system (seat belt) requirements
60-6,287	Operating a motor vehicle which is equipped to enable the driver to watch television while driving
60-6,319	Commercial dealer selling bicycle which fails to comply with requirements
60-6,373	Operation of diesel-powered motor vehicle in violation of controls on smoke emission and noise
60-1411.04	Unlawful advertising of motor vehicles
60-1808	Violation of laws relating to motor vehicle camper units
60-1908	Destroying, defacing, or removing parts of abandoned motor vehicles
61-211	Managers or operators of interstate ditches failing to install measuring devices and furnish daily gauge height reports
69-208	Violation of laws relating to pawnbrokers and dealers in secondhand goods
69-1005	Violation of requirements for sale at auction of commercial chicks and poultry
69-1007	Failure to keep records on sale of poultry
69-1008	False representation in sale of poultry
69-1102	Failing to comply with labeling requirements on binder twine
70-409	Violation of rate regulations by electric companies
70-624	Failure of chief executive officer to publish salaries of public power district officers

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CLASS V MISDEMEANOR

71-503	Physician failing to report existence of contagious disease, illness, or poisoning
71-506	Violation of prevention and testing provisions for contagious and infectious diseases
71-1006	Violation of laws relating to disposal of dead bodies
71-1571	Installation of 4 or more showers or bathtubs without scald prevention device
71-2511	Violation of restrictions on sale of poisons
71-3107	Violation of laws relating to recreation camps
71-4410	Violation of rabies control provisions
*71-5733	Smoking in place of employment or public place, first offense
71-5733	Proprietor violating Nebraska Clean Indoor Air Act, first offense
74-593	Using track motor cars on rail lines without headlights or rear lights
74-605	Failure of railroad to report or care for injured animals
74-1308	Failure of Railroad Transportation Safety District treasurer to file report or neglect of duties or refusal by district officials to allow inspection of records
*74-1340	Failure, neglect, or refusal to comply with order of Department of Roads regarding railroad crossings
75-429	Failure of railroad to maintain or operate switch stand lights and signals
76-247	Register of deeds giving certified copy of power of attorney which has been revoked without stating fact of revocation in certificate
76-2,122	Acting as real estate closing agent without license or without complying with law
77-2105	Failure to furnish information or reports for estate or generation-skipping transfer taxes
77-5016.08	Prohibited acts relating to subpoenas, testimony, and depositions in Tax Equalization and Review Commission proceedings
79-223	Violation of student immunization requirements
79-253	Violation regarding physical examinations of students
79-571	Disorderly conduct at school district meetings
79-581	Failure by secretary of Class I, II, III, or VI school district to publish claims and summary of proceedings
*79-606	Failure to remove equipment from and repaint school transportation vehicles sold for other purposes
79-607	Violation of traffic regulations or failure to include obligation to comply with traffic regulation in school district employment contract
79-608	Violations by a school bus driver involving licensing or hours of service
*79-899	Failure of school board to suspend or dismiss teacher for wearing religious garb on duty
79-949	Failure or refusal to furnish information to retirement board for school employees retirement
79-1084	Secretary of Class III school board failing or neglecting to publish budget documents
79-1086	Secretary of Class V school board failing or neglecting to publish budget documents
81-520	Failure to comply with order of State Fire Marshal to remove or abate fire hazards
81-522	Failure of city or county authorities to investigate and report fires

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CLASS V MISDEMEANOR

- 81-538 Violation of State Fire Marshal or fire abatement provisions when not otherwise specified
- 81-5,146 Violation of smoke detector provisions
- 81-5,163 Water-based fire protection system contractor failing to comply with requirements
- 81-649.02 Failure by hospital to make reports to cancer registry
- 81-6,120 Provision of transportation services by certain persons or failing to submit to background check prior to providing such services to vulnerable adults or minors on behalf of Department of Health and Human Services
- 81-1024 Personal use of state-owned motor vehicle
- 81-1551 Failure to place litter receptacles on premises in sufficient number
- 81-1552 Damaging or misusing litter receptacle
- *82-124 Damage to property of Nebraska State Historical Society
- 82-126 Violating restrictions on visitation to state sites and monuments
- 83-356 Mistreatment of mentally ill persons
- 86-161 Failure of telecommunications company to file territorial maps
- 86-609 Unlawful telegraph dispatch activities
- 88-549 Failure of warehouse licensee to send written notice to person storing grain of amount, location, and fees

***Sections noted with an asterisk have additional penalty provisions**

CLASS W MISDEMEANOR

First Conviction:

Maximum—sixty days' imprisonment and five hundred dollars fine

Mandatory minimum—seven days' imprisonment and five hundred dollars fine

Second Conviction:

Maximum—six months' imprisonment and five hundred dollars fine

Mandatory minimum—thirty days' imprisonment and five hundred dollars fine

Third Conviction:

Maximum—one year imprisonment and one thousand dollars fine

Mandatory minimum—ninety days' imprisonment and one thousand dollars fine

- 60-690 Aiding or abetting a violation of the Nebraska Rules of the Road which is a Class W misdemeanor
- *60-6,197.03 Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug committed with less than .15 gram alcohol concentration
- *60-6,197.03 Operation of a motor vehicle while under the influence of alcoholic liquor or of any drug committed with .15 gram alcohol concentration, first offense only
- *60-6,197.03 Refusal to submit to chemical blood, breath, or urine test

***Sections noted with an asterisk have additional penalty provisions**

UNCLASSIFIED MISDEMEANORS, see section 28-107

- 14-227 Failure to remit fines, penalties, and forfeitures to city treasurer
–fine of not more than one thousand dollars
–imprisonment of not more than six months
- 14-229 City officer or employee exerting influence regarding political views
–fine of not more than one hundred dollars

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UNCLASSIFIED MISDEMEANORS, see section 28-107

- imprisonment of not more than thirty days
- 15-215 Using unsafe building for the assembly of more than 12 persons
 - fine of not more than two hundred dollars
- 16-233 Using unsafe building for the assembly of more than 12 persons
 - fine of not more than two hundred dollars
- 16-706 Unauthorized use of city funds by city council member or city officer
 - fine of twenty-five dollars plus costs of prosecution
- 18-1914 Violation of plumbing ordinances or plumbing license requirements
 - fine of not more than fifty dollars and not less than five dollars per violation
- 18-1918 Installing or repairing sanitary plumbing without permit
 - fine of not less than fifty dollars nor more than five hundred dollars
- 18-2205 Violation involving community antenna television service or franchise ordinance
 - fine of not more than five hundred dollars
- 18-2315 Violation involving heating, ventilating, and air conditioning services
 - fine of not more than five hundred dollars
 - imprisonment of not more than six months
 - both
- 19-905 Remove, alter, or destroy posted notice prior to building zone and regulation hearing
- 19-913 Violation of zoning laws and ordinances and building regulations
 - fine of not more than one hundred dollars
 - imprisonment of not more than thirty days
- 19-1104 Failure of city or village clerk or treasurer to publish council proceedings or fiscal statement
 - fine of not more than twenty-five dollars and removal from office
- 20-124 Interference with freedom of speech and access to public accommodation
 - fine of not more than one hundred dollars
 - imprisonment of not more than six months
 - both
- 20-140 Equal Opportunity Commission officer or employee revealing unlawful discrimination complaint or investigation
 - fine of not more than one hundred dollars
 - imprisonment of not more than thirty days
- 23-2533 Willful violation of County Civil Service Act
 - fine of not more than five hundred dollars
 - imprisonment of not more than six months
 - both
- 25-2231 Constable acting outside of jurisdiction
 - fine of not less than ten dollars nor more than one hundred dollars
 - imprisonment of not more than ten days
- 29-426 Failure to appear or comply with citation for traffic or other offense
 - fine of not more than five hundred dollars
 - imprisonment of not more than three months
 - both
- 31-134 Obstructing drainage ditch
 - fine of not less than ten dollars nor more than fifty dollars
- 31-221 Injuring or obstructing watercourse, drain, or ditch

APPENDIX

UNCLASSIFIED MISDEMEANORS, see section 28-107

- fine of not less than twenty-five dollars nor more than one hundred dollars
- imprisonment of not more than thirty days
- 31-226 Failure to clear watercourse, drain, or ditch after notice
- fine of not more than ten dollars
- 31-366 Willfully obstruct, injure, or destroy ditch, drain, watercourse, or dike of drainage district
- fine of not more than one hundred dollars
- 31-445 Obstruct ditch, drain, or watercourse or injure dike, levee, or other work of drainage district
- fine of not more than one hundred dollars
- imprisonment of not more than six months
- 31-507.01 Connection to sanitary sewer without permit
- fine of not less than twenty-five dollars nor more than one hundred dollars
- 33-153 Failure to report and remit fees to county for taking acknowledgments, oaths, and affirmations
- fine of not more than one hundred dollars
- 44-2504 Domestic insurer transacting unauthorized insurance business in reciprocal state
- fine of not more than ten thousand dollars
- 54-1365 Violation of Nebraska Swine Brucellosis Act when not otherwise specified
- fine of not less than one hundred dollars nor more than five hundred dollars
- imprisonment of not more than thirty days
- both
- 55-112 Failure to return or illegal use of military property
- fine of not more than fifty dollars
- 60-684 Refusal to sign traffic citation
- fine of not more than five hundred dollars
- imprisonment of not more than three months
- both
- 69-111 Security interest in personal property, failure to account or produce for inspection
- fine of not less than five dollars nor more than one hundred dollars
- imprisonment of not more than thirty days
- 74-918 Failure by railroad to supply drinking water and toilet facilities
- fine of not less than one hundred dollars nor more than five hundred dollars
- 75-130 Failure by witness to testify or comply with subpoena of Public Service Commission
- fine of not more than five thousand dollars
- 76-215 Failure to furnish real estate transfer tax statement
- fine of not less than ten dollars nor more than five hundred dollars
- 76-218 Violations involving acknowledging and recording instruments of conveyance
- fine of not more than five hundred dollars
- imprisonment of not more than one year
- 76-239.05 Failure to apply construction financing for labor and materials
- fine of not less than one hundred dollars nor more than one thousand dollars
- imprisonment of not more than six months
- both

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UNCLASSIFIED MISDEMEANORS, see section 28-107

- 76-2,108 Defrauding another by making a dual contract for purchase of real property or inducing the extension of credit
–fine of not less than one hundred dollars nor more than five hundred dollars
–imprisonment of not less than five days nor more than thirty days
–both
- 77-1250.02 Owner, lessee, or manager of aircraft hangar or land upon which is parked or located any aircraft report aircraft to the county assessor
–fine of not more than fifty dollars
- 77-1313 Failure of county officer to assist county assessor in assessment of property
–fine of not less than fifty dollars nor more than five hundred dollars
- 77-1613.02 County assessor willfully reducing or increasing valuation of property without approval of county board of equalization
–fine of not less than twenty dollars nor more than one hundred dollars
- 77-1918 County officers failing to perform duties related to foreclosure
–removal from office
- 77-2703 Seller fails or refuses to furnish certified statement regarding a motor vehicle, motorboat, all-terrain vehicle, or utility-type vehicle transaction
–fine of not less than twenty-five dollars nor more than one hundred dollars
- 77-2706 Giving a resale certificate to avoid sales tax
- 79-2,103 Soliciting membership in fraternity, society, or other association on school grounds
–fine of not less than two dollars nor more than ten dollars
- 79-898 Teacher wearing any dress or garb indicating religious affiliation
–fine of not more than one hundred dollars
–imprisonment of not more than thirty days
–both
- 81-171 Using state mailing room or postage metering machine for private mail
–fine of not less than twenty dollars nor more than one hundred dollars
- *83-114 Officer or employee interfering in an official Department of Health and Human Services investigation
–fine of not less than ten dollars nor more than one hundred dollars
- 84-732 Governor or Attorney General knowingly failing or refusing to implement laws
–fine of one hundred dollars
–impeachment

***Sections noted with an asterisk have additional penalty provisions**

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ACTS, CODES, AND OTHER NAMED LAWS

NAME OF ACT	WHERE CITED
Abstracters Act	76-535
Access College Early Scholarship Program Act	85-2101
Address Confidentiality Act	42-1201
Administrative Procedure Act	84-920
Adult Protective Services Act	28-348
Advanced Practice Registered Nurse Practice Act	38-201
Age Discrimination in Employment Act	48-1001
Agricultural Liming Materials Act	2-4301
Agricultural Suppliers Lease Protection Act	2-5501
Air and Water Pollution Control Tax Refund Act	77-27,155
Airport Zoning Act	3-333
Alcohol and Drug Counseling Practice Act	38-301
Alzheimer's Special Care Disclosure Act	71-516.01
American Indian Arts and Crafts Sales Act	69-1801
Angel Investment Tax Credit Act	77-6301
Animal Importation Act	54-784.01
Anthrax Control Act	54-764
Arson Reporting Immunity Act	81-5,115
Asbestos Control Act	71-6317
Assault of an Unborn Child Act	28-395
Assisted-Living Facility Act	71-5901
Assistive Technology Regulation Act	69-2601
Assumption Reinsurance Act	44-6201
Athletic Training Practice Act	38-401
Audiology and Speech-Language Pathology Practice Act	38-501
Autism Treatment Program Act	68-962
Automated Medication Systems Act	71-2444
Automatic Dialing-Announcing Devices Act	86-236
Barber Act	71-224
Behavioral Health Workforce Act	71-828
Beginning Farmer Tax Credit Act	77-5201
Black-Tailed Prairie Dog Management Act	23-3801
Boiler Inspection Act	48-719
Bovine Tuberculosis Act	54-706.01
Brain Injury Registry Act	81-653
Buffer Strip Act	2-5101
Build Nebraska Act	39-2701
Building Construction Act	71-6401
Burial Pre-Need Sale Act	12-1101
Business Development Partnership Act	81-1272
Business Improvement District Act	19-4015
Business Innovation Act	81-12,152
Cancer Drug Repository Program Act	71-2422
Captive Insurers Act	44-8201

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Center for Student Leadership and Extended Learning Act	79-772
Certified Industrial Hygienist Title Protection Act	71-8001
Certified Nurse Midwifery Practice Act	38-601
Certified Registered Nurse Anesthetist Practice Act	38-701
Charitable Gift Annuity Act	59-1801
Child and Maternal Death Review Act	71-3404
Child Care Licensing Act	71-1908
Child Pornography Prevention Act	28-1463.01
Child Protection and Family Safety Act	28-710
Childhood Lead Poisoning Prevention Act	71-2513
Childhood Vaccine Act	71-526
Children and Family Behavioral Health Support Act	71-821
Children's Health and Treatment Act	68-2001
Children's Residential Facilities and Placing Licensure Act	71-1924
Chiropractic Practice Act	38-801
Cities Airport Authorities Act	3-514
Civic and Community Center Financing Act	13-2701
Civil Service Act	19-1825
Class V School Employees Retirement Act	79-978.01
Clinical Nurse Specialist Practice Act	38-901
Collection Agency Act	45-601
Combined Improvement Act	19-2415
Commercial Dog and Cat Operator Inspection Act	54-625
Commercial Feed Act	54-847
Commercial Real Estate Broker Lien Act	52-2101
Commission for the Blind and Visually Impaired Act	71-8601
Commodity Code	8-1701
Community College Aid Act	85-2231
Community Corrections Act	47-619
Community Development Assistance Act	13-201
Community Development Law	18-2101
Competitive Livestock Markets Act	54-2601
Comprehensive Health Insurance Pool Act	44-4201
Compressed Fuel Tax Act	66-697
Computer Crimes Act	28-1341
Concealed Handgun Permit Act	69-2427
Conciliation Court Law	42-802
Concussion Awareness Act	71-9101
Condominium Property Act	76-801
Conservation and Preservation Easements Act	76-2,118
Conservation Corporation Act	2-4201
Consumer Protection Act	59-1623
Consumer Rental Purchase Agreement Act	69-2101
Contractor Registration Act	48-2101
Controlled Substances Animal Welfare Act	54-2501
Convention Center Facility Financing Assistance Act	13-2601
Conveyance Safety Act	48-2501
Convicted Sex Offender Act	29-2922
Coordinating Commission for Postsecondary Education Act	85-1401
Correctional System Overcrowding Emergency Act	83-960
Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act	38-1001

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County Agricultural Society Act	2-250
County Budget Act of 1937	23-901
County Civil Service Act	23-2517
County Drainage Act	31-933
County Employees Retirement Act	23-2331
County Highway and City Street Superintendents Act	39-2301
County Horseracing Facility Bond Act	23-392
County Industrial Sewer Construction Act	23-3601
County Purchasing Act	23-3101
County Revenue Assistance Act	29-3919
Court Appointed Special Advocate Act	43-3701
Credit Report Protection Act	8-2601
Credit Services Organization Act	45-801
Credit Union Act	21-1701
Cremation of Human Remains Act	71-1355
Critical Incident Stress Management Act	71-7101
Dairy Industry Development Act	2-3948
Deferred Building Renewal Act	81-190
Degradable Products Act	69-2001
Delayed Birth Registration Act	71-617.01
Delayed Deposit Services Licensing Act	45-901
Dentistry Practice Act	38-1101
Developmental Disabilities Court-Ordered Custody Act	71-1101
Developmental Disabilities Services Act	83-1201
Diploma of High School Equivalency Assistance Act	79-2301
Disabled Persons and Family Support Act	68-1501
Disclosure of Material Insurance Transactions Act	44-6301
Discount Medical Plan Organization Act	44-8301
Disposition of Personal Property Landlord and Tenant Act	69-2301
Dispute Resolution Act	25-2901
DNA Identification Information Act	29-4101
DNA Testing Act	29-4116
Dog and Cat Purchase Protection Act	54-644
Domesticated Cervine Animal Act	54-2302
Drinking Water State Revolving Fund Act	71-5314
Dry Bean Resources Act	2-3735
Early Intervention Act	43-2501
Educational Service Units Act	79-1201
Election Act	32-101
Electric Cooperative Corporation Act	70-701
Emergency Box Drug Act	71-2410
Emergency Management Act	81-829.36
Emergency Medical Services Practice Act	38-1201
Emergency Telephone Communications Systems Act	86-420
Employee Classification Act	48-2901
Employment and Investment Growth Act	77-4101
Employment Security Law	48-601
Engineers and Architects Regulation Act	81-3401
Enhanced Wireless 911 Services Act	86-442
Enterprise Zone Act	13-2101.01
Environmental Health Specialists Practice Act	38-1301
Environmental Protection Act	81-1532

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Equipment Business Regulation Act	87-701
Erosion and Sediment Control Act	2-4601
Ethanol Development Act	66-1330
Excellence in Teaching Act	79-8,132
Exotic Animal Auction or Exchange Venue Act	54-7,105
Exploited Children’s Civil Remedy Act	25-21,290
Extraterritorial Airports Act	3-244
False Medicaid Claims Act	68-934
Family Military Leave Act	55-501
Farm Homestead Protection Act	76-1901
Farm Labor Contractors Act	48-1701
Farm Mediation Act	2-4801
Financial Data Protection and Consumer Notification of Data Security Breach Act of 2006	87-801
Food Supply Animal Veterinary Incentive Program Act	54-501
Foster Care Review Act	43-1318
Franchise Practices Act	87-410
Free Flow of Information Act	20-147
Funeral Directing and Embalming Practice Act	38-1401
Game Law	37-201
Genetic Counseling Practice Act	38-3401
Genetically Handicapped Persons Act	68-1401
Geologists Regulation Act	81-3501
Grain Dealer Act	75-901
Grain Sorghum Resources Act	2-4001
Grain Warehouse Act	88-525
Guaranteed Asset Protection Waiver Act	45-1101
Health and Human Services, Office of Juvenile Services Act	43-401
Health and Human Services Act	81-3110
Health Care Facility Licensure Act	71-401
Health Care Facility-Provider Cooperation Act	71-7701
Health Care Professional Credentialing Verification Act	44-7001
Health Care Prompt Payment Act	44-8001
Health Care Purchasing Pool Act	44-6701
Health Care Quality Improvement Act	71-7904
Health Care Transparency Act	71-9201
Health Carrier External Review Act	44-1301
Health Carrier Grievance Procedure Act	44-7301
Health Insurance Access Act	44-5301
Health Insurance Exchange Navigator Registration Act	44-8801
Health Maintenance Organization Act	44-3292
Hearing Instrument Specialists Practice Act	38-1501
high-rise building fire code	81-541.01
Hog Cholera Control and Eradication Act	54-1513
Homeless Shelter Assistance Trust Fund Act	68-1601
Homicide of the Unborn Child Act	28-388
Hospital Authorities Act	23-3579
Hospital Sinking Fund Act	15-235.05
ICF/DD Reimbursement Protection Act	68-1801
Immunosuppressant Drug Repository Program Act	71-2436
In the Line of Duty Dependent Education Act	85-2301
Income Withholding for Child Support Act	43-1701

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Indoor Tanning Facility Act	71-3901
Industrial Ground Water Regulatory Act	46-690
Industrial Relations Act	48-801.01
Infant Hearing Act	71-4734
Information Technology Infrastructure Act	86-501
Insurance Company Plan of Exchange Act	44-248
Insurance Fraud Act	44-6601
Insurance Holding Company System Act	44-2120
Insurance Producers Licensing Act	44-4047
Insured Homeowners Protection Act	44-8601
Insurers and Health Organizations Risk-Based Capital Act	44-6001
Insurers Demutualization Act	44-6101
Insurers Examination Act	44-5901
Insurers Investment Act	44-5101
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	6	29-2269		7	18-2142.04		9	Omitted
	7	43-245		8	19-4018	LB 657	§ 1	18-1736
	8	43-247		9	19-4031		2	18-1741.02
	9	43-246.01		10	19-4034		3	60-331.01
	10	43-247.03		11	Omitted		4	60-3,113
	11	43-247.04		12	Omitted		5	60-3,113.01
	12	43-255	LB 513	§ 1	46-707		6	60-3,113.02
	13	43-258		2	46-708		7	60-3,113.03
	14	43-261		3	Omitted		8	60-3,113.04
	15	43-264	LB 514	§ 1	81-15,147		9	60-3,113.05
	16	43-274		2	81-15,148		10	60-3,113.06
	17	43-276		3	81-15,149		11	60-3,113.07
	18	43-281		4	81-15,151		12	60-3,113.08
	19	43-285		5	81-15,151.03		13	Omitted
	20	43-286		6	81-15,152		14	Omitted
	21	43-290.01		7	81-15,153	LB 658	§ 1	86-597
	22	43-290		8	Omitted		2	86-598
	23	43-297.01	LB 526	§ 1	38-2604		3	Omitted
	24	43-2,106.03		2	38-2605		4	Omitted
	25	43-2,108		3	38-2614	LB 659	§ 1	Omitted
	26	43-2,129		4	Omitted	LB 660	§ 1	68-1212
	27	43-407	LB 546	§ 1	85-404		2	68-1213
	28	43-413		2	85-408		3	Omitted
	29	43-425		3	85-426		4	Omitted
	30	43-2404.02		4	85-1413	LB 660A		Omitted
	31	43-2404.03		5	85-1416	LB 661	§ 1	32-101
	32	43-4102		6	85-1418		2	32-204
	33	43-4203		7	Omitted		3	32-304
	34	79-209		8	Omitted		4	32-308
	35	79-527.01	LB 558	§ 1	25-21,149		5	32-309
	36	81-1427		2	77-1735		6	32-311
	37	Omitted		3	Omitted		7	32-312
	38	Omitted	LB 560	§ 1	48-1228		8	32-312.05
	39	Omitted		2	48-1233		9	32-315
LB 464A	§ 1	Omitted		3	48-1234		10	32-321
	2	Omitted		4	48-1230		11	32-323
	3	Omitted		5	48-1231		12	32-325
	4	Omitted		6	Omitted		13	32-902
	5	Omitted	LB 560A		Omitted		14	32-915
	6	Omitted	LB 565	§ 1	32-942		15	32-1002
	7	Omitted		2	Omitted		16	60-484
	8	Omitted	LB 588	§ 1	23-2529		17	60-484.02
	9	Omitted		2	48-225		18	Omitted
LB 470	§ 1	13-504		3	48-227	LB 661A		Omitted
	2	79-2401		4	Omitted	LB 674	§ 1	28-1009
	3	79-2402		5	Omitted		2	28-1019
	4	79-2403	LB 597	§ 1	2-259		3	Omitted
	5	79-2404		2	2-264	LB 679	§ 1	14-420
	6	79-2405		3	Omitted		2	18-2115
	7	Omitted		4	Omitted		3	Omitted

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2014		2014		2014		2014	
Session	Laws	Session	Laws	Session	Laws	Session	Laws
	Cumulative Supplement		Cumulative Supplement		Cumulative Supplement		Cumulative Supplement
44	21-244	102	21-2,102	160	21-2,160		
45	21-245	103	21-2,103	161	21-2,161		
46	21-246	104	21-2,104	162	21-2,162		
47	21-247	105	21-2,105	163	21-2,163		
48	21-248	106	21-2,106	164	21-2,164		
49	21-249	107	21-2,107	165	21-2,165		
50	21-250	108	21-2,108	166	21-2,166		
51	21-251	109	21-2,109	167	21-2,167		
52	21-252	110	21-2,110	168	21-2,168		
53	21-253	111	21-2,111	169	21-2,169		
54	21-254	112	21-2,112	170	21-2,170		
55	21-255	113	21-2,113	171	21-2,171		
56	21-256	114	21-2,114	172	21-2,172		
57	21-257	115	21-2,115	173	21-2,173		
58	21-258	116	21-2,116	174	21-2,174		
59	21-259	117	21-2,117	175	21-2,175		
60	21-260	118	21-2,118	176	21-2,176		
61	21-261	119	21-2,119	177	21-2,177		
62	21-262	120	21-2,120	178	21-2,178		
63	21-263	121	21-2,121	179	21-2,179		
64	21-264	122	21-2,122	180	21-2,180		
65	21-265	123	21-2,123	181	21-2,181		
66	21-266	124	21-2,124	182	21-2,182		
67	21-267	125	21-2,125	183	21-2,183		
68	21-268	126	21-2,126	184	21-2,184		
69	21-269	127	21-2,127	185	21-2,185		
70	21-270	128	21-2,128	186	21-2,186		
71	21-271	129	21-2,129	187	21-2,187		
72	21-272	130	21-2,130	188	21-2,188		
73	21-273	131	21-2,131	189	21-2,189		
74	21-274	132	21-2,132	190	21-2,190		
75	21-275	133	21-2,133	191	21-2,191		
76	21-276	134	21-2,134	192	21-2,192		
77	21-277	135	21-2,135	193	21-2,193		
78	21-278	136	21-2,136	194	21-2,194		
79	21-279	137	21-2,137	195	21-2,195		
80	21-280	138	21-2,138	196	21-2,196		
81	21-281	139	21-2,139	197	21-2,197		
82	21-282	140	21-2,140	198	21-2,198		
83	21-283	141	21-2,141	199	21-2,199		
84	21-284	142	21-2,142	200	21-2,200		
85	21-285	143	21-2,143	201	21-2,201		
86	21-286	144	21-2,144	202	21-2,202		
87	21-287	145	21-2,145	203	21-2,203		
88	21-288	146	21-2,146	204	21-2,204		
89	21-289	147	21-2,147	205	21-2,205		
90	21-290	148	21-2,148	206	21-2,206		
91	21-291	149	21-2,149	207	21-2,207		
92	21-292	150	21-2,150	208	21-2,208		
93	21-293	151	21-2,151	209	21-2,209		
94	21-294	152	21-2,152	210	21-2,210		
95	21-295	153	21-2,153	211	21-2,211		
96	21-296	154	21-2,154	212	21-2,212		
97	21-297	155	21-2,155	213	21-2,213		
98	21-298	156	21-2,156	214	21-2,214		
99	21-299	157	21-2,157	215	21-2,215		
100	21-2,100	158	21-2,158	216	21-2,216		
101	21-2,101	159	21-2,159	217	21-2,217		

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2014 Session Laws	2014 Cumulative Supplement	2014 Session Laws	2014 Cumulative Supplement	2014 Session Laws	2014 Cumulative Supplement
218	21-2,218	276	21-2976		16 Omitted
219	21-2,219	277	28-1354	LB 751A	Omitted
220	21-2,220	278	30-3214	LB 753	§ 1 21-114
221	21-2,221	279	33-101		2 21-192
222	21-2,222	280	44-205.01		3 Omitted
223	21-2,223	281	44-206	LB 755	§ 1 44-8901
224	21-2,224	282	44-208.02		2 44-8902
225	21-2,225	283	44-211		3 44-8903
226	21-2,226	284	44-224.01		4 44-8904
227	21-2,227	285	44-224.04		5 44-8905
228	21-2,228	286	44-301		6 44-8906
229	21-2,229	287	44-2128		7 44-8907
230	21-2,230	288	44-2916		8 44-8908
231	21-2,231	289	44-3112		9 44-8909
232	21-2,232	290	44-32,115		10 44-8910
233	8-1401	291	44-3312		11 44-8911
234	8-2104	292	44-3812		12 44-8912
235	8-2306	293	67-248.02		13 44-403
236	8-2311	294	84-511		14 44-407.23
237	9-614	295	Omitted		15 44-407.24
238	21-301	296	Omitted		16 44-407.26
239	21-302	297	Omitted		17 44-408
240	21-303	298	Omitted		18 Omitted
241	21-304	LB 750	§ 1 52-2201		19 Omitted
242	21-305		2 52-203	LB 757	§ 1 39-1010
243	21-306		3 52-204		2 81-710
244	21-311		4 52-501		3 Omitted
245	21-312		5 52-504		4 Omitted
246	21-313		6 52-701	LB 758	§ 1 60-363
247	21-314		7 52-702		2 Omitted
248	21-315		8 52-903	LB 759	§ 1 13-2402
249	21-318		9 52-905		2 2-3228
250	21-319		10 52-1103		3 12-101
251	21-321		11 52-1104		4 14-567
252	21-322		12 52-1203		5 14-1805.01
253	21-323		13 52-1205		6 14-2111
254	21-323.01		14 52-1407		7 15-1017
255	21-323.02		15 52-1409		8 16-1002
256	21-325		16 54-201		9 16-1007
257	21-325.01		17 54-208		10 16-1017
258	21-325.02		18 54-209		11 16-1021
259	21-328		19 Omitted		12 16-1027
260	21-329		20 Omitted		13 16-1037
261	21-330	LB 751	§ 1 21-401		14 19-3501
262	21-1301		2 21-402		15 23-1118
263	21-1931		3 21-403		16 23-2309.01
264	21-1933		4 21-404		17 23-3526
265	21-19,151		5 21-405		18 30-3209
266	21-2103		6 21-406		19 71-1631.02
267	21-2105		7 21-407		20 72-1263
268	21-2110		8 21-408		21 84-304
269	21-2115		9 21-409		22 84-1310.01
270	21-2203		10 21-410		23 Omitted
271	21-2204		11 21-411	LB 765	§ 1 48-1229
272	21-2209		12 21-412		2 48-1230
273	21-2212		13 21-413		3 Omitted
274	21-2439		14 21-414		4 Omitted
275	21-2971		15 84-511	LB 766	§ 1 85-505

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2014 Session Laws	2014 Cumulative Supplement	2014 Session Laws	2014 Cumulative Supplement	2014 Session Laws	2014 Cumulative Supplement
	4 28-712.01		5 12-512.01		7 54-704
	5 28-713		6 12-512.02		8 54-705
	6 28-713.01		7 12-512.04		9 54-750
	7 28-718		8 12-512.05		10 54-751
	8 28-719		9 12-516		11 54-752
	9 28-720		10 12-518		12 54-753
	10 28-720.01		11 12-808		13 54-7,105
	11 28-721		12 12-812		14 54-7,105.01
	12 28-722		13 17-934		15 54-7,106
	13 28-723		14 17-944		16 54-7,107
	14 28-724		15 28-101		17 54-7,108
	15 28-725		16 28-1418		18 54-7,109
	16 28-726		17 28-1418.01		19 54-7,110
	17 28-728		18 28-1419		20 54-1156
	18 28-801		19 28-1425		21 54-1158
	19 43-107		20 28-1427		22 54-1159
	20 43-146.17		21 28-1429.02		23 54-1160.01
	21 43-247		22 28-1429.03		24 54-1161
	22 43-284.02		23 53-122		25 54-1163
	23 43-285		24 53-179		26 54-1166
	24 43-905		25 53-183		27 54-1169
	25 43-1311.03		26 53-190		28 54-1170
	26 43-2932		27 59-1523		29 54-1173
	27 43-3709		28 81-2104		30 54-1180
	28 43-4318		29 Omitted		31 54-1181
	29 43-4331		30 Omitted		32 54-1182
	30 43-4501		31 Omitted		33 Omitted
	31 43-4502		32 Omitted		34 Omitted
	32 43-4503	LB 867	§ 1 13-2709	LB 901	§ 1 71-830
	33 43-4504		2 13-3107		2 71-3001
	34 43-4505		3 13-3108		3 71-3002
	35 43-4506		4 14-2138		4 71-3003
	36 43-4507		5 14-2139		5 71-3004
	37 43-4508		6 66-6,102		6 71-3005
	38 43-4508.01		7 76-902		7 71-3006
	39 43-4509		8 77-2701		8 71-3007
	40 43-4510		9 77-2701.04		9 Omitted
	41 43-4511		10 77-2701.11	LB 901A	1 Omitted
	42 43-4512		11 77-2701.35	LB 905	§ 1 Omitted
	43 43-4513		12 77-2704.13		2 Omitted
	44 43-4514		13 77-2704.65		3 Omitted
	45 68-1214		14 77-2704.66		4 Omitted
	46 71-3405		15 77-2711		5 Omitted
	47 71-6039.01		16 77-27,144		6 Omitted
	48 71-6039.05		17 Omitted		7 Omitted
	49 71-6502		18 Omitted		8 Omitted
	50 81-3136		19 Omitted		9 Omitted
	51 Omitted		20 Omitted		10 Omitted
LB 853A	Omitted		21 Omitted		11 Omitted
LB 854	§ 1 81-3137		22 Omitted		12 Omitted
LB 859	§ 1 71-467	LB 867A	Omitted		13 Omitted
	2 71-468	LB 876	§ 1 44-309		14 Omitted
	3 71-469	LB 884	§ 1 54-170		15 Omitted
	4 Omitted		2 54-1,129		16 Omitted
LB 863	§ 1 12-531		3 54-1,130		17 Omitted
	2 12-532		4 54-1,131		18 Omitted
	3 12-501		5 54-701.03		19 Omitted
	4 12-502		6 54-703		20 Omitted

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2014 Session Laws	2014 Cumulative Supplement	2014 Session Laws	2014 Cumulative Supplement	2014 Session Laws	2014 Cumulative Supplement
21	Omitted	79	Omitted	4	43-284.02
22	Omitted	80	90-539	5	43-285
23	Omitted	81	Omitted	6	43-905
24	Omitted	82	Omitted	7	43-1318
25	Omitted	83	Omitted	8	43-1312.01
26	Omitted	84	Omitted	9	71-824
27	Omitted	85	Omitted	10	Omitted
28	Omitted	LB 906 § 1	Omitted	LB 920 § 1	30-4101
29	Omitted	2	60-1505	2	30-4102
30	Omitted	3	Omitted	3	30-4103
31	Omitted	4	37-327.03	4	30-4104
32	Omitted	5	Omitted	5	30-4105
33	Omitted	6	Omitted	6	30-4106
34	Omitted	7	61-222	7	30-4107
35	Omitted	8	Omitted	8	30-4108
36	Omitted	9	2-1588	9	30-4109
37	Omitted	10	2-1592	10	30-4110
38	Omitted	11	2-3225	11	30-4111
39	Omitted	12	2-3226.05	12	30-4112
40	Omitted	13	24-205	13	30-4113
41	Omitted	14	24-227.01	14	30-4114
42	Omitted	15	39-1390	15	30-4115
43	Omitted	16	48-622.01	16	30-4116
44	Omitted	17	58-708	17	30-4117
45	Omitted	18	71-7611	18	30-4118
46	Omitted	19	81-1204	19	30-2201
47	Omitted	20	81-1205	20	30-2601
48	Omitted	21	81-2516	21	30-2601.01
49	Omitted	22	Omitted	22	30-2626
50	Omitted	23	Omitted	23	30-2627
51	Omitted	24	Omitted	24	30-2630.01
52	Omitted	LB 907 § 1	7-201	25	30-2639
53	90-541	2	7-202	26	30-2640
54	Omitted	3	7-203	27	Omitted
55	Omitted	4	7-204	28	Omitted
56	Omitted	5	7-206	LB 920A	Omitted
57	Omitted	6	7-210	LB 923 § 1	79-2,143
58	Omitted	7	7-207	2	79-2,144
59	Omitted	8	7-208	3	79-2,145
60	Omitted	9	7-209	4	79-2,146
61	Omitted	10	29-3927	5	71-9104
62	Omitted	11	28-1501	6	Omitted
63	Omitted	12	48-202	LB 923A	Omitted
64	Omitted	13	83-903	LB 930 § 1	76-2301
65	Omitted	14	83-904	2	76-2331
66	Omitted	15	83-1,102	3	76-2323
67	Omitted	16	83-1,104	4	76-2324
68	Omitted	17	83-1,107	5	76-2325
69	Omitted	18	83-1,119	6	Omitted
70	Omitted	19	90-540	LB 937 § 1	23-277
71	Omitted	20	Omitted	2	Omitted
72	Omitted	21	Omitted	LB 941 § 1	2-3993
73	Omitted	22	Omitted	2	54-857
74	Omitted	23	Omitted	3	Omitted
75	Omitted	LB 907A	Omitted	LB 941A	Omitted
76	Omitted	LB 908 § 1	30-2608	LB 946 § 1	10-703.01
77	Omitted	2	43-104.02	2	23-1901.01
78	Omitted	3	43-245	3	32-101

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2014 Session Laws	2014 Cumulative Supplement	2014 Session Laws	2014 Cumulative Supplement	2014 Session Laws	2014 Cumulative Supplement	
	4	32-209	15	48-674	5	81-153
	5	32-210	16	48-675	6	81-181
	6	32-405	17	48-676	7	81-1018
	7	32-525	18	48-677	8	81-1111.01
	8	32-542	19	48-678	9	81-1113
	9	32-543	20	48-679	10	81-1125.01
	10	32-567	21	48-680	11	81-3110
	11	32-122	22	48-681	12	81-3133.01
	12	32-608	23	48-682	13	81-3133.02
	13	32-616	24	48-683	14	81-3133.03
	14	32-713	25	Omitted	15	81-3133
	15	32-714	26	Omitted	16	Omitted
	16	32-949.01	27	Omitted	17	Omitted
	17	32-953	28	Omitted	LB 974A	Omitted
	18	32-956	LB 964 § 1	40-102	LB 983 § 1	29-3608
	19	32-957	2	40-105	2	60-462
	20	32-1202	3	Omitted	3	60-462.01
	21	49-1413	4	Omitted	4	60-463
	22	49-1415	LB 967 § 1	1-116	5	60-464
	23	49-1433.01	2	9-812	6	60-465
	24	49-1445	3	72-201	7	60-465.02
	25	49-1455	4	79-319	8	60-479
	26	49-1456	5	79-526	9	60-480
	27	49-1457	6	79-535	10	60-484
	28	49-1461.01	7	79-759	11	60-484.03
	29	49-1463.01	8	79-8,133	12	60-484.04
	30	49-1467	9	79-8,137.01	13	60-484.05
	31	49-1469	10	79-8,137.05	14	60-484.06
	32	49-1477	11	79-1003	15	60-487
	33	49-1479.02	12	79-1007.11	16	60-4,112
	34	49-1488.01	13	79-1007.23	17	60-4,115
	35	79-406	14	79-1007.25	18	60-4,116
	36	79-443	15	79-1011	19	60-4,118.05
	37	79-451	16	79-1012	20	60-4,131
	38	79-4,123	17	79-1017.01	21	60-4,131.01
	39	79-4,129	18	79-1028.01	22	60-4,132
	40	79-547	19	79-1101	23	60-4,137
	41	79-549	20	79-1102	24	60-4,138
	42	79-550	21	79-11,155	25	60-4,139
	43	79-10,111	22	79-1118.01	26	60-4,141
	44	Omitted	23	79-1337	27	60-4,142
	45	Omitted	24	79-2306	28	60-4,143
	46	Omitted	25	85-1603	29	60-4,144
LB 949		Omitted	26	85-1604	30	60-4,144.01
LB 961 § 1	35-201		27	85-2405	31	60-4,144.02
	2	35-202	28	85-2407	32	60-4,144.03
	3	44-2825	29	Omitted	33	60-4,144.04
	4	45-1201	30	Omitted	34	60-4,146
	5	45-1202	LB 967A § 1	Omitted	35	60-4,147.01
	6	45-1203	2	90-541	36	60-4,149
	7	45-1204	3	Omitted	37	60-4,149.01
	8	45-1211	4	Omitted	38	60-4,150
	9	45-1205	5	Omitted	39	60-4,151
	10	48-126.01	6	Omitted	40	60-4,149.02
	11	48-139	LB 974 § 1	73-507	41	60-4,153
	12	48-601	2	77-2215	42	60-4,154
	13	48-672	3	79-1145	43	60-4,157
	14	48-673	4	81-132	44	60-4,158

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2014 Session Laws	2014 Cumulative Supplement	2014 Session Laws	2014 Cumulative Supplement	2014 Session Laws	2014 Cumulative Supplement	
	45	60-4,159	2	28-311.08	12	Omitted
	46	60-4,160	3	28-367.01	13	Omitted
	47	60-4,162	4	28-830	14	Omitted
	48	60-4,167	5	28-831	LB 1042A	Omitted
	49	60-4,168	6	29-4003	LB 1044	§ 1 60-1901
	50	60-4,169	7	30-2201		2 Omitted
	51	60-4,170	8	30-2223	LB 1048	§ 1 32-206
	52	60-4,171	9	38-1425		2 32-610
	53	60-4,172	10	38-1426		3 32-613
	54	60-4,182	11	38-1427		4 32-614
	55	60-6,179.01	12	60-6,209		5 32-701
	56	60-6,179.02	13	60-6,211.11		6 32-702
	57	60-2905	14	71-605		7 32-703
	58	60-2907	15	71-1356		8 32-704
	59	60-2909.01	16	71-1373		9 32-707
	60	75-362	17	71-4813		10 32-719
	61	75-363	18	83-1,127.02		11 32-720
	62	75-364	19	Omitted		12 Omitted
	63	75-366	20	Omitted		13 Omitted
	64	75-369.03	LB 999	§ 1 83-305.05	LB1050	§ 1 43-2618
	65	Omitted	LB 999A	§ 1 Omitted		2 71-1911
	66	Omitted		2 Omitted		3 71-1912
	67	Omitted		3 Omitted		4 Omitted
	68	Omitted	LB 1001	§ 1 2-5701	LB 1067	§ 1 77-27,144
	69	Omitted		2 28-401		2 77-5725
	70	Omitted		3 Omitted		3 77-5806
LB 983A		Omitted	LB 1008	§ 1 2-4902		4 77-5905
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	2	77-3508	LB 1012	§ 1 18-2103		6 77-6304
	3	77-3509		2 Omitted		7 77-6305
	4	77-3513		3 Omitted		8 77-6306
	5	Omitted	LB 1014	§ 1 14-2102		9 77-6307
	6	Omitted		2 14-2103		10 77-6309
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LB 987	§ 1	77-2715.03		4 Omitted		12 Omitted
	2	77-2716	LB 1016	§ 1 3-159		13 Omitted
	3	Omitted		2 3-106		14 Omitted
LB 987A		Omitted		3 84-612	LB 1072	§ 1 71-2454
LB 989	§ 1	77-382		4 Omitted		2 71-2455
	2	77-383		5 Omitted		3 71-2456
	3	77-385	LB 1016A	Omitted		4 Omitted
	4	81-125	LB 1039	§ 1 60-601	LB 1076	§ 1 71-8503
	5	Omitted		2 60-6,382		2 71-8506
LB 994	§ 1	71-612		3 60-6,288		3 71-8508
	2	Omitted		4 60-6,289		4 Omitted
	3	Omitted		5 60-6,290	LB 1087	§ 1 77-3501
	4	Omitted		6 Omitted		2 77-3501.01
LB 994A	§ 1	Omitted	LB 1042	§ 1 79-902		3 77-3506.02
	2	Omitted		2 79-921		4 77-3506.03
	3	Omitted		3 79-924		5 77-3506
	4	Omitted		4 79-933.02		6 77-3509
	5	Omitted		5 79-933.07		7 77-3509.01
	6	Omitted		6 79-933.08		8 77-3509.02
LB 997	§ 1	48-622.01		7 79-933.09		9 77-3509.03
	2	48-622.02		8 79-980		10 77-3510
	3	48-622.03		9 79-987		11 77-3511
	4	Omitted		10 79-991		12 77-3512
LB 998	§ 1	12-1208		11 84-1503		13 77-3513

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	14 77-3514		5 2-1508	LB 1098A	Omitted
	15 77-3516		6 2-1509	LB 1103 § 1	50-426
	16 77-3517		7 2-1510		2 50-427
	17 77-3521		8 2-1511		3 Omitted
	18 77-3522		9 2-1512	LB 1114 § 1	13-208
	19 77-3523		10 2-1513		2 81-12,154
	20 77-3529		11 2-3226.05		3 81-12,167
	21 77-4212		12 46-241		4 81-1213.01
	22 Omitted		13 46-701		5 Omitted
	23 Omitted		14 46-715	LB 1114A	Omitted
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	3 2-1506		21 Omitted	LB 1115A	Omitted
	4 2-1507				



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Legislative Bills, One Hundred Third Legislature
Second Session, 2014

Showing the date each act went into effect.
Convened January 8, 2014, and adjourned April 17, 2014.

LB No.	Effective Date	LB No.	Effective Date
33	July 18, 2014	446	July 18, 2014
56	February 19, 2014	464	Sections 3, 4, 8, 9, 16, 17, and 38 of this act become operative on January 1, 2015. The other sections of this act become operative on July 18, 2014.
76	February 14, 2014		
96	October 1, 2014 (operative date)		
130	July 18, 2014		
132	July 18, 2014		
144	July 18, 2014		
174	July 18, 2014	464A	April 16, 2014
191	July 18, 2014	470	July 1, 2014 (operative date)
191A	July 18, 2014		
215	July 18, 2014	474	March 27, 2014
251	October 1, 2014 (operative date)	513	July 18, 2014
254	Sections 1, 2, and 8 of this act become operative on July 18, 2014. Section 3 of this act becomes operative on July 1, 2014. The other sections of this act become operative on April 22, 2014.	514	July 18, 2014
		526	July 18, 2014
		546	July 18, 2014
		558	July 18, 2014
		560	July 18, 2014
		560A	July 18, 2014
		565	July 18, 2014
		588	January 1, 2015 (operative date)
		597	February 14, 2014
259	July 18, 2014	656	July 18, 2014
272	July 18, 2014	657	July 18, 2014
276	July 18, 2014	658	July 18, 2014
276A	July 18, 2014	659	July 18, 2014
278	July 18, 2014	660	April 3, 2014
359	July 18, 2014	660A	April 3, 2014
359A	July 18, 2014	661	July 18, 2014
364	July 18, 2014	661A	July 18, 2014
371	March 27, 2014	674	July 18, 2014
371A	March 27, 2014	679	July 18, 2014
383	July 18, 2014	683	July 18, 2014
383A	July 18, 2014	687	July 18, 2014
390	July 18, 2014	687A	July 18, 2014
402	July 18, 2014	690	July 18, 2014
403	July 18, 2014	690A	July 18, 2014
438	April 10, 2014	692	July 18, 2014
438A	April 10, 2014	693	January 1, 2015

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LB No.	Effective Date	LB No.	Effective Date
	(operative date)		operative on April 5,
697	July 18, 2014		2014. The other sections
698	July 18, 2014		of this act become
699	April 3, 2014		operative on July 18,
700	Sections 1 to 11 of this		2014.
	act become operative on	774	July 18, 2014
	January 1, 2015. The	776	March 29, 2014
	other sections of this act	777	July 18, 2014
	become operative on July	780	July 18, 2014
	18, 2014.	781	July 18, 2014
701	July 18, 2014	788	July 18, 2014
702	April 11, 2014	792	July 18, 2014
712	April 11, 2014	798	July 18, 2014
714	April 11, 2014	800	July 18, 2014
717	Sections 15, 16, 17, 18,	802	July 18, 2014
	19, 20, and 27 of this act	803	July 18, 2014
	become operative on	806	July 18, 2014
	January 1, 2015. The	811	July 18, 2014
	other sections of this act	814	October 1, 2014
	become operative on		(operative date)
	April 10, 2014.	814A	July 18, 2014
719	July 18, 2014	816	July 18, 2014
725	April 3, 2014	828	July 18, 2014
725A	April 3, 2014	836	July 18, 2014
728	March 29, 2014	838	February 27, 2014
735	July 18, 2014	844	July 18, 2014
736	July 18, 2014	851	Sections 1, 2, 3, 6, 7, 8,
737	July 18, 2014		9, 10, 13, 14, and 18 of
739	April 11, 2014		this act become operative
740	July 18, 2014		on July 18, 2014.
744	July 1, 2014		Sections 4, 5, 11, 12, and
	(operative date)		19 of this act become
744A	July 18, 2014		operative on October 1,
749	January 1, 2016		2014. The other sections
	(operative date)		of this act become
750	April 11, 2014		operative on April 10,
751	July 18, 2014		2014.
751A	July 18, 2014	853	July 18, 2014
753	July 18, 2014	853A	July 18, 2014
755	July 18, 2014	854	July 18, 2014
757	July 18, 2014	859	July 18, 2014
758	July 18, 2014	863	April 10, 2014
759	July 18, 2014	867	Sections 4, 5, 6, 12, and
765	January 1, 2015		21 of this act become
	(operative date)		operative on January 1,
766	July 18, 2014		2015. Sections 8, 9, 10,
768	Sections 5, 8, 9, 11, 12,		11, 14, and 19 of this act
	and 14 of this act become		become operative on

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LB No.	Effective Date	LB No.	Effective Date
	April 1, 2014. Section 13 of this act becomes operative on October 1, 2014. Sections 7, 15, 16, and 20 of this act become operative on July 18, 2014. The other sections of this act become operative on April 3, 2014.	937	July 18, 2014
		941	July 18, 2014
		941A	July 18, 2014
		946	January 1, 2015 (operative date)
		949	March 30, 2014
		961	Sections 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 28 of this act become operative on October 1, 2016. The other sections of this act become operative on July 18, 2014.
867A	April 3, 2014		
876	July 18, 2014		
884	July 18, 2014		
901	July 18, 2014		
901A	July 18, 2014	964	July 18, 2014
905	Provisions line-item vetoed by the Governor and overridden by the Legislature became effective on April 2, 2014. All other provisions became effective on March 30, 2014.	967	April 3, 2014
		967A	April 3, 2014
		974	April 3, 2014
		974A	July 18, 2014
		983	Sections 1, 5, 9, 10, 11, 12, 14, 16, 17, 18, 19, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 50, 51, 52, 53, 57, 58, 59, 64, 68, and 69 of this act become operative on July 8, 2015. Sections 13, 40, and 67 of this act become operative on July 18, 2014. The other sections of this act become operative on March 29, 2014.
906	Provisions line-item vetoed by the Governor and overridden by the Legislature became effective on April 2, 2014. All other provisions became effective on March 30, 2014.		
907	Sections 11, 20, and 23 of this act become operative on April 17, 2014. The other sections of this act become operative on July 18, 2014.	983A	March 29, 2014
		986	April 3, 2014
		986A	April 3, 2014
		987	July 18, 2014
		987A	July 18, 2014
		989	July 18, 2014
		994	July 1, 2014 (operative date)
907A	April 17, 2014	994A	April 16, 2014
908	July 18, 2014	997	July 18, 2014
920	January 1, 2015 (operative date)	998	April 10, 2014
920A	July 18, 2014	999	July 18, 2014
923	July 18, 2014	999A	July 18, 2014
923A	July 18, 2014	1001	July 18, 2014
930	July 18, 2014		

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LB No.	Effective Date	LB No.	Effective Date
1008	July 18, 2014	1072	July 18, 2014
1012	April 3, 2014	1076	July 18, 2014
1014	July 18, 2014	1087	January 1, 2015 (operative date)
1016	March 29, 2014	1087A	July 18, 2014
1016A	March 29, 2014	1089	July 18, 2014
1039	July 18, 2014	1098	Sections 17 and 19 of this act become operative on July 18, 2014. The other sections of this act become operative on April 17, 2014.
1042	April 17, 2014	1098A	July 18, 2014
1042A	April 17, 2014	1103	April 3, 2014
1044	July 18, 2014	1114	July 18, 2014
1048	July 18, 2014	1114A	July 18, 2014
1050	July 18, 2014	1115	April 17, 2014
1067	Sections 5, 6, 7, 8, 9, 10, and 12 of this act become operative for all taxable years beginning or deemed to begin on or after January 1, 2014, under the Internal Revenue Code of 1986, as amended. The other sections of this act become operative on April 10, 2014.	1115A	April 17, 2014

APPENDIX

APPENDIX
SCHEDULES OF LIFE EXPECTANCIES

EXPECTANCY TABLES

EXPECTANCY OF LIFE FROM 10 TO 95 YEARS

Age	Actuaries'	American	1941 Commissioners
10	48.36	48.72	55.47
11	47.68	48.08	54.58
12	47.01	47.45	53.68
13	46.33	46.80	52.78
14	45.64	46.16	51.89
15	44.96	45.50	50.99
16	44.27	44.85	50.10
17	43.58	44.19	49.21
18	42.88	43.53	48.32
19	42.19	42.87	47.43
20	41.49	42.20	46.54
21	40.70	41.53	45.66
22	40.09	40.85	44.77
23	39.39	40.17	43.88
24	38.68	39.49	43.00
25	37.98	38.81	42.12
26	37.27	38.12	41.24
27	36.56	37.43	40.36
28	35.86	36.73	39.49
29	35.15	36.03	38.61
30	34.43	35.33	37.74
31	33.72	34.63	36.88
32	33.01	33.92	36.01
33	32.30	33.21	35.15
34	31.58	32.50	34.29
35	30.87	31.78	33.44
36	30.15	31.07	32.59
37	29.44	30.35	31.75
38	28.72	29.62	30.91
39	28.00	28.90	30.08
40	27.28	28.18	29.25
41	26.56	27.45	28.43
42	25.84	26.72	27.62
43	25.12	26.00	26.81
44	24.40	25.27	26.01
45	23.69	24.54	25.21
46	22.97	23.81	24.43
47	22.27	23.08	23.65
48	21.56	22.36	22.88
49	20.87	21.63	22.12
50	20.18	20.91	21.37
51	19.50	20.20	20.64
52	18.82	19.49	19.91

APPENDIX

Age	Actuaries'	American	1941 Commissioners
53	18.16	18.79	19.19
54	17.50	18.09	18.48
55	16.86	17.40	17.78
56	16.22	16.72	17.10
57	15.59	16.05	16.43
58	14.97	15.39	15.77
59	14.37	14.74	15.13
60	13.77	14.10	14.50
61	13.18	13.47	13.88
62	12.61	12.86	13.27
63	12.05	12.26	12.69
64	11.51	11.67	12.11
65	10.97	11.10	11.55
66	10.46	10.54	11.01
67	9.96	10.00	10.48
68	9.47	9.47	9.97
69	9.00	8.97	9.47
70	8.54	8.48	8.99
71	8.10	8.00	8.52
72	7.67	7.55	8.08
73	7.26	7.11	7.64
74	6.86	6.68	7.23
75	6.48	6.27	6.82
76	6.11	5.88	6.44
77	5.76	5.49	6.07
78	5.42	5.11	5.72
79	5.09	4.74	5.38
80	4.78	4.39	5.06
81	4.48	4.05	4.75
82	4.18	3.71	4.46
83	3.90	3.39	4.18
84	3.63	3.08	3.91
85	3.36	2.77	3.66
86	3.10	2.47	3.42
87	2.84	2.18	3.19
88	2.59	1.91	2.98
89	2.35	1.66	2.77
90	2.11	1.42	2.58
91	1.89	1.19	2.39
92	1.67	.98	2.21
93	1.47	.80	2.03
94	1.28	.64	1.84
95	1.12	.50	1.63

APPENDIX

COMMISSIONERS

1958

STANDARD ORDINARY MORTALITY TABLE

Complete Expectation of Life

Age	Years	Age	Years	Age	Years	Age	Years
0	68.30	25	45.82	50	23.63	75	7.81
1	67.78	26	44.90	51	22.82	76	7.39
2	66.90	27	43.99	52	22.03	77	6.98
3	66.00	28	43.08	53	21.25	78	6.59
4	65.10	29	42.16	54	20.47	79	6.21
5	64.19	30	41.25	55	19.71	80	5.85
6	63.27	31	40.34	56	18.97	81	5.51
7	62.35	32	39.43	57	18.23	82	5.19
8	61.43	33	38.51	58	17.51	83	4.89
9	60.51	34	37.60	59	16.81	84	4.60
10	59.58	35	36.69	60	16.12	85	4.32
11	58.65	36	35.78	61	15.44	86	4.06
12	57.72	37	34.88	62	14.78	87	3.80
13	56.80	38	33.97	63	14.14	88	3.55
14	55.87	39	33.07	64	13.51	89	3.31
15	54.95	40	32.18	65	12.90	90	3.06
16	54.03	41	31.39	66	12.31	91	2.82
17	53.11	42	30.41	67	11.73	92	2.58
18	52.19	43	29.54	68	11.17	93	2.33
19	51.28	44	28.67	69	10.64	94	2.07
20	50.37	45	27.81	70	10.12	95	1.80
21	49.46	46	26.95	71	9.63	96	1.51
22	48.55	47	26.11	72	9.15	97	1.18
23	47.64	48	25.27	73	8.69	98	.83
24	46.73	49	24.45	74	8.24	99	.50

APPENDIX

COMMISSIONERS

1980

STANDARD ORDINARY MORTALITY TABLE

Complete Expectation of Life

<u>Age</u>	Male		Female		<u>Age</u>	Male		Female		<u>Age</u>	Male		Female	
	<u>Expectancy</u>	<u>Expectancy</u>	<u>Expectancy</u>	<u>Expectancy</u>		<u>Expectancy</u>	<u>Expectancy</u>	<u>Expectancy</u>	<u>Expectancy</u>		<u>Expectancy</u>	<u>Expectancy</u>	<u>Expectancy</u>	<u>Expectancy</u>
0	70.48	75.44	34	39.08	43.44	67	12.46	15.47						
1	69.67	74.58	35	38.16	42.51	68	11.85	14.75						
2	68.74	73.64	36	37.24	41.58	69	11.26	14.03						
3	67.81	72.70	37	36.32	40.66	70	10.68	13.32						
4	66.87	71.76	38	35.41	39.74	71	10.12	12.63						
5	65.93	70.81	39	34.51	38.82	72	9.58	11.95						
6	64.99	69.86	40	33.61	37.91	73	9.06	11.28						
7	64.04	68.91	41	32.71	37.01	74	8.56	10.64						
8	63.09	67.96	42	31.82	36.11	75	8.08	10.02						
9	62.14	67.01	43	30.94	35.21	76	7.63	9.42						
10	61.19	66.05	44	30.06	34.33	77	7.19	8.84						
11	60.23	65.10	45	29.19	33.44	78	6.78	8.29						
12	59.28	64.14	46	28.33	32.56	79	6.38	7.75						
13	58.33	63.19	47	27.47	31.69	80	6.00	7.24						
14	57.40	62.24	48	26.62	30.82	81	5.63	6.74						
15	56.47	61.29	49	25.78	29.96	82	5.27	6.27						
16	55.55	60.34	50	24.94	29.10	83	4.94	5.82						
17	54.63	59.40	51	24.11	28.25	84	4.63	5.40						
18	53.73	58.46	52	23.30	27.40	85	4.33	5.00						
19	52.82	57.51	53	22.49	26.56	86	4.06	4.63						
20	51.92	56.57	54	21.69	25.73	87	3.80	4.28						
21	51.02	55.63	55	20.90	24.90	88	3.55	3.94						
22	50.12	54.69	56	20.13	24.08	89	3.31	3.63						
23	49.21	53.75	57	19.37	23.27	90	3.07	3.32						
24	48.30	52.81	58	18.62	22.46	91	2.83	3.02						
25	47.39	51.87	59	17.88	21.65	92	2.59	2.72						
26	46.47	50.93	60	17.15	20.85	93	2.33	2.41						
27	45.55	49.99	61	16.43	20.05	94	2.05	2.10						
28	44.62	49.05	62	15.73	19.26	95	1.74	1.77						
29	43.70	48.12	63	15.04	18.47	96	1.41	1.43						
30	42.77	47.18	64	14.37	17.70	97	1.08	1.08						
31	41.85	46.24	65	13.72	16.95	98	.75	.76						
32	40.92	45.31	66	13.08	16.20	99	.50	.50						
33	40.00	44.38												

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