

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 868

Introduced by Flood, 19.

Read first time January 11, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to criminal procedure; to amend sections
2 29-2262, 29-2266, 29-2277, 29-2278, 29-2279, 48-126.01,
3 48-147, 53-180.05, 60-6,211.02, and 60-6,211.06, Reissue
4 Revised Statutes of Nebraska, sections 48-115 and
5 48-145, Revised Statutes Cumulative Supplement, 2008,
6 and section 48-106, Revised Statutes Supplement, 2009;
7 to name, change, and adopt provisions for the Community
8 Service Sentencing Act; to provide for community service
9 programs; to state findings and intent; to remove
10 offenders performing community service and persons
11 fulfilling conditions of probation from coverage under
12 the Nebraska Workers' Compensation Act; to limit
13 liability of a community service program under the
14 Community Service Act and provide duties; to change

1 penalties for a minor in possession of alcohol and a
2 minor driving with blood alcohol concentration within
3 certain limits; to harmonize provisions; and to repeal
4 the original sections.

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

1 Section 1. Section 29-2262, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 29-2262 (1) When a court sentences an offender to
4 probation, it shall attach such reasonable conditions as it deems
5 necessary or likely to insure that the offender will lead a
6 law-abiding life. No offender shall be sentenced to probation if
7 he or she is deemed to be a habitual criminal pursuant to section
8 29-2221.

9 (2) The court may, as a condition of a sentence of
10 probation, require ~~the~~ an adult offender:

11 (a) To refrain from unlawful conduct;

12 (b) To be confined periodically in the county jail or to
13 return to custody after specified hours but not to exceed (i) for
14 misdemeanors, the lesser of ninety days or the maximum jail term
15 provided by law for the offense and (ii) for felonies, one hundred
16 eighty days;

17 (c) To meet his or her family responsibilities;

18 (d) To devote himself or herself to a specific employment
19 or occupation;

20 (e) To undergo medical or psychiatric treatment and to
21 enter and remain in a specified institution for such purpose;

22 (f) To pursue a prescribed secular course of study or
23 vocational training;

24 (g) To attend or reside in a facility established for the
25 instruction, recreation, or residence of persons on probation;

1 (h) To refrain from frequenting unlawful or disreputable
2 places or consorting with disreputable persons;

3 (i) To possess no firearm or other dangerous weapon if
4 convicted of a felony, or if convicted of any other offense, to
5 possess no firearm or other dangerous weapon unless granted written
6 permission by the court;

7 (j) To remain within the jurisdiction of the court and
8 to notify the court or the probation officer of any change in his
9 or her address or his or her employment and to agree to waive
10 extradition if found in another jurisdiction;

11 (k) To report as directed to the court or a probation
12 officer and to permit the officer to visit his or her home;

13 (l) To pay a fine in one or more payments as ordered;

14 (m) To pay for tests to determine the presence of drugs
15 or alcohol, psychological evaluations, offender assessment screens,
16 and rehabilitative services required in the identification,
17 evaluation, and treatment of offenders if such offender has the
18 financial ability to pay for such services;

19 (n) To perform community service as outlined in ~~sections~~
20 ~~29-2277 to 29-2279~~ the Community Service Sentencing Act under the
21 direction of his or her probation officer;

22 (o) To be monitored by an electronic surveillance device
23 or system and to pay the cost of such device or system if the
24 offender has the financial ability;

25 (p) To participate in a community correctional facility

1 or program as provided in the Community Corrections Act;

2 (q) To successfully complete an incarceration work camp
3 program as determined by the Department of Correctional Services;

4 (r) To satisfy any other conditions reasonably related to
5 the rehabilitation of the offender;

6 (s) To make restitution as described in sections 29-2280
7 and 29-2281; or

8 (t) To pay for all costs imposed by the court, including
9 court costs and the fees imposed pursuant to section 29-2262.06.

10 (3) In all cases in which the offender is guilty
11 of violating section 28-416, a condition of probation shall be
12 mandatory treatment and counseling as provided by such section.

13 (4) In all cases in which the offender is guilty of
14 a crime covered by the DNA Identification Information Act, a
15 condition of probation shall be the collecting of a DNA sample
16 pursuant to the act prior to release on probation.

17 Sec. 2. Section 29-2266, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 29-2266 (1) For purposes of this section:

20 (a) Administrative sanction means additional probation
21 requirements imposed upon a probationer by his or her probation
22 officer, with the full knowledge and consent of the probationer,
23 designed to hold the probationer accountable for substance abuse or
24 noncriminal violations of conditions of probation, including:

25 (i) Counseling or reprimand by his or her probation

1 officer;

2 (ii) Increased supervision contact requirements;

3 (iii) Increased substance abuse testing;

4 (iv) Referral for substance abuse or mental health
5 evaluation or other specialized assessment, counseling, or
6 treatment;

7 (v) Imposition of a designated curfew for a period not to
8 exceed thirty days;

9 (vi) Community service for a specified number of hours
10 pursuant to ~~sections 29-2277 to 29-2279;~~ the Community Service
11 Sentencing Act;

12 (vii) Travel restrictions to stay within his or her
13 county of residence or employment unless otherwise permitted by the
14 supervising probation officer; and

15 (viii) Restructuring court-imposed financial obligations
16 to mitigate their effect on the probationer;

17 (ix) Referral for employment programming;

18 (x) Referral for life skills programming;

19 (xi) Referral for cognitive programming such as
20 problem-solving and responsible decision-making;

21 (xii) Attending self-help groups;

22 (xiii) Obtaining a sponsor;

23 (xiv) Refraining from frequenting certain places or
24 locations;

25 (xv) Refraining from the use of computers or other

1 electronic communication devices;

2 (xvi) Completing a report or essay; and

3 (xvii) Attending and completing a driving-related class,
4 such as defensive driving or "Alive at 25".

5 (b) Noncriminal violation means a probationer's
6 activities or behaviors which create the opportunity for
7 re-offending or diminish the effectiveness of probation supervision
8 resulting in a violation of an original condition of probation,
9 including:

10 (i) Moving traffic violations;

11 (ii) Failure to report to his or her probation officer;

12 (iii) Leaving the jurisdiction of the court or leaving
13 the state without the permission of the court or his or her
14 probation officer;

15 (iv) Failure to work regularly or attend training or
16 school;

17 (v) Failure to notify his or her probation officer of
18 change of address or employment;

19 (vi) Frequenting places where controlled substances are
20 illegally sold, used, distributed, or administered;

21 (vii) Failure to perform community service as directed;

22 and

23 (viii) Failure to pay fines, court costs, restitution, or
24 any fees imposed pursuant to section 29-2262.06 as directed; and

25 (ix) Failure to attend self-help groups as ordered;

1 (x) Failure to attend rehabilitative programming as
2 ordered;

3 (xi) Any attempt to adulterate or misrepresent a sample
4 intended for chemical testing;

5 (xii) Failure to attend or complete substance abuse,
6 mental health, sex offender, or domestic violence treatment or
7 counseling sessions;

8 (xiii) Failure to refrain from the use of a computer or
9 other electronic communication device;

10 (xiv) Failure to refrain from entering or frequenting a
11 business whose primary source of income is the sale of alcohol; and

12 (xv) Tampering with electronic monitoring equipment or an
13 ignition interlock device.

14 (c) Substance abuse violation means a probationer's
15 activities or behaviors associated with the use of chemical
16 substances or related treatment services resulting in a violation
17 of an original condition of probation, including:

18 (i) Positive breath test for the consumption of alcohol
19 if the offender is required to refrain from alcohol consumption;

20 (ii) Positive urinalysis for the illegal use of drugs;

21 (iii) Failure to report for alcohol testing or drug
22 testing; and

23 (iv) Failure to appear for or complete substance abuse
24 or mental health treatment evaluations or inpatient or outpatient
25 treatment.

1 (2) Whenever a probation officer has reasonable cause to
2 believe that a probationer has committed or is about to commit
3 a substance abuse violation or noncriminal violation while on
4 probation, but that the probationer will not attempt to leave the
5 jurisdiction and will not place lives or property in danger, the
6 probation officer shall either:

7 (a) Impose one or more administrative sanctions with the
8 approval of his or her chief probation officer or such chief's
9 designee. The decision to impose administrative sanctions in lieu
10 of formal revocation proceedings rests with the probation officer
11 and his or her chief probation officer or such chief's designee
12 and shall be based upon the probationer's risk level, the severity
13 of the violation, and the probationer's response to the violation.
14 If administrative sanctions are to be imposed, the probationer
15 shall acknowledge in writing the nature of the violation and agree
16 upon the administrative sanction. The probationer has the right to
17 decline to acknowledge the violation; and if he or she declines to
18 acknowledge the violation, the probation officer shall take action
19 pursuant to subdivision (2)(b) of this section. A copy of the
20 report shall be submitted to the county attorney of the county
21 where probation was imposed; or

22 (b) Submit a written report to the sentencing court,
23 with a copy to the county attorney of the county where probation
24 was imposed, outlining the nature of the probation violation and
25 request that formal revocation proceedings be instituted against

1 the probationer.

2 (3) Whenever a probation officer has reasonable cause to
3 believe that a probationer has violated or is about to violate a
4 condition of probation other than a substance abuse violation or
5 noncriminal violation and that the probationer will not attempt to
6 leave the jurisdiction and will not place lives or property in
7 danger, the probation officer shall submit a written report to the
8 sentencing court, with a copy to the county attorney of the county
9 where probation was imposed, outlining the nature of the probation
10 violation.

11 (4) Whenever a probation officer has a reasonable cause
12 to believe that a probationer has violated or is about to violate
13 a condition of his or her probation and that the probationer will
14 attempt to leave the jurisdiction or will place lives or property
15 in danger, the probation officer shall arrest the probationer
16 without a warrant and may call on any peace officer for assistance.
17 Whenever a probationer is arrested, with or without a warrant, he
18 or she shall be detained in a jail or other detention facility.

19 (5) Immediately after arrest and detention pursuant to
20 subsection (4) of this section, the probation officer shall notify
21 the county attorney of the county where probation was imposed and
22 submit a written report of the reason for such arrest and of any
23 violation of probation. After prompt consideration of such written
24 report, the county attorney shall:

25 (a) Order the probationer's release from confinement; or

1 (b) File with the sentencing court a motion or
2 information to revoke the probation.

3 (6) Whenever a county attorney receives a report from a
4 probation officer that a probationer has violated a condition of
5 probation, the county attorney may file a motion or information to
6 revoke probation.

7 (7) The administrator shall adopt and promulgate rules
8 and regulations to carry out this section.

9 Sec. 3. Sections 29-2277 to 29-2279 and sections 3, 5, 6,
10 7, 8, 9, and 10 of this act shall be known and may be cited as the
11 Community Service Sentencing Act.

12 Sec. 4. Section 29-2277, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 29-2277 As used in sections 29-2277 to 29-2279, the
15 Community Service Sentencing Act, unless the context otherwise
16 requires:

17 ~~(1) Agency shall mean any public or governmental~~
18 ~~unit, institution, division, or agency or any private nonprofit~~
19 ~~organization which provides services intended to enhance the social~~
20 ~~welfare or general well-being of the community, which agrees to~~
21 ~~accept community service from offenders and to supervise and~~
22 ~~report the progress of such community service to the court or its~~
23 ~~representative; and~~

24 ~~(2) (1) Community service shall mean means uncompensated~~
25 ~~labor for an agency a community service program to be performed by~~

1 an offender when the offender is not working or attending school;i-

2 (2) Community service program means a program meeting the
3 requirements of section 7 of this act;

4 (3) Court means a district court, county court, or
5 juvenile court; and

6 (4) Offender means any person convicted of an infraction,
7 misdemeanor, or felony and any juvenile, as defined in section
8 43-245, adjudicated to be a juvenile described in subdivision (1),
9 (2), (3)(b), or (4) of section 43-247.

10 Sec. 5. The Legislature hereby finds that (1) community
11 service can help transform certain offenders into ethical and
12 productive members of society by requiring the offenders to give
13 back to the communities affected by their crimes, (2) offenders
14 also benefit from the discipline of community service, and they
15 learn accountability and an appreciation for the law, and (3) the
16 offender's community service benefits the community as well, while
17 saving the community the costs of incarcerating the offender.

18 Sec. 6. (1) Except when caused by willful, wanton
19 misconduct or gross negligence of the community service program,
20 a community service program is not liable (a) for any injury to
21 or death of an offender while performing community service or (b)
22 for any tortious acts of an offender committed while performing
23 community service. For purposes of this section, community service
24 program includes any official, volunteer, or employee of the
25 community service program while in the performance of his or her

1 duties for the community service program.

2 (2) An offender sentenced to community service shall not
3 be considered an employee of the community service program for any
4 purpose, and a community service program is not required to provide
5 workers' compensation coverage for offenders while the offenders
6 are performing community service under the program. The community
7 service program or other recipient of the community service shall
8 not provide compensation to the offender.

9 Sec. 7. A county, city, or village, any other public or
10 governmental unit, institution, division, or agency, or any private
11 nonprofit organization which provides services intended to enhance
12 the social welfare or general well-being of the community may
13 establish a community service program. A community service program
14 shall:

15 (1) Have an assigned supervisor for the program;

16 (2) Have appropriate community service projects, such
17 as projects identified in section 7 of this act, which fulfill
18 the purposes of the Community Service Sentencing Act of both
19 rehabilitating the offender and benefitting the community;

20 (3) Have the equipment available that is needed to
21 perform the community service projects;

22 (4) Agree to accept community service from offenders as
23 ordered by the court; and

24 (5) Provide supervision of the offenders while performing
25 community service and report the progress of the community service

1 to the sentencing court or its representative.

2 Sec. 8. Before a community service program can provide
3 community service projects for offenders, the community service
4 program must be approved by the chief probation officer of
5 the probation district where the community service program is
6 located. The community service program shall request approval from
7 such officer and shall provide such officer with any relevant
8 information requested by the officer. The chief probation officer
9 shall approve the program if the officer believes that the program
10 has the ability to and will meet the requirements of section 5 of
11 this act.

12 Sec. 9. Community service projects may include lawn
13 care, snow removal, and other exterior maintenance of grounds and
14 buildings (1) for the disabled and elderly in the community who are
15 indigent, (2) in public parks and other publicly owned property,
16 and (3) for any residential real estate owner who is violating a
17 state statute or county or city ordinance relating to the failure
18 to maintain the premises in an acceptable manner, including a
19 violation of section 16-230 or 17-563.

20 Sec. 10. (1) A community service program shall provide
21 to the chief probation officer of the probation district where the
22 program is located, on a written form, any information useful for
23 assigning an offender to an appropriate community service project,
24 including:

25 (a) A description of the community service project;

1 (b) The days of the week and the hours of each day that
2 each community service project is to be performed;

3 (c) Special skills or physical requirements necessary to
4 perform the community service project; and

5 (d) For a community service project of limited duration,
6 the date when the availability of the project expires.

7 (2) The chief probation officer shall keep the courts
8 of the probation district apprised of available community service
9 projects.

10 Sec. 11. Section 29-2278, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 29-2278 An offender may be sentenced to community service
13 by a court through a community service program (1) as an
14 alternative to a fine, incarceration, or supervised probation,
15 or in lieu of incarceration if he or she fails to pay a fine
16 as ordered, except when the violation of a misdemeanor or felony
17 requires mandatory incarceration or imposition of a fine, (2) as a
18 condition of probation, or (3) in addition to any other sanction.
19 The court shall establish the terms and conditions of community
20 service including, but not limited to, a reasonable time limit for
21 completion. If an offender fails to perform community service as
22 ordered by the court, he or she may be arrested and after a hearing
23 may be resentenced on the original charge, have probation revoked,
24 or be found in contempt of court. No person convicted of an offense
25 involving serious bodily injury or sexual assault shall be eligible

1 for community service.

2 Sec. 12. Section 29-2279, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 29-2279 (1) The length of a community service sentence
5 for an adult offender shall be: as follows:

6 ~~(1)~~ (a) For a Class IV or Class V misdemeanor, not less
7 than four nor more than eighty hours;

8 ~~(2)~~ (b) For a Class III or Class IIIA misdemeanor, not
9 less than eight nor more than one hundred fifty hours;

10 ~~(3)~~ (c) For a Class I or Class II misdemeanor, not less
11 than twenty nor more than four hundred hours;

12 ~~(4)~~ (d) For a Class IIIA or Class IV felony, not less
13 than two hundred nor more than three thousand hours; and

14 ~~(5)~~ (e) For a Class III felony, not less than four
15 hundred nor more than six thousand hours.

16 (2) The length of a community service sentence for a
17 juvenile offender shall be:

18 (a) For a juvenile described in subdivision (1) or (2)
19 of section 43-247, a number of hours that an adult offender could
20 receive under subsection (1) of this section for the same conduct;
21 and

22 (b) For a juvenile described in subdivision (3)(b) or (4)
23 of section 43-247, not less than four nor more than eighty hours.

24 Sec. 13. Section 48-106, Revised Statutes Supplement,
25 2009, is amended to read:

1 48-106 (1) The Nebraska Workers' Compensation Act shall
2 apply to the State of Nebraska, to every governmental agency
3 created by the state, and, except as provided in this section,
4 to every resident employer in this state and nonresident employer
5 performing work in this state who employs one or more employees
6 in the regular trade, business, profession, or vocation of such
7 employer.

8 (2) The act shall not apply to:

9 (a) A railroad company engaged in interstate or foreign
10 commerce;

11 (b) Service performed by a worker who is a household
12 domestic servant in a private residence;

13 (c) Service performed by a worker when performed for an
14 employer who is engaged in an agricultural operation and employs
15 only related employees;

16 (d) Service performed by a worker when performed for
17 an employer who is engaged in an agricultural operation and
18 employs unrelated employees unless such service is performed for
19 an employer who during any calendar year employs ten or more
20 unrelated, full-time employees, whether in one or more locations,
21 on each working day for thirteen calendar weeks, whether or not
22 such weeks are consecutive. The act shall apply to an employer
23 thirty days after the thirteenth such week; and

24 (e) Service performed by a person who is engaged in
25 an agricultural operation, or performed by his or her related

1 employees, when the service performed is (i) occasional and (ii)
2 for another person who is engaged in an agricultural operation who
3 has provided or will provide reciprocal or similar service;—

4 (f) Service performed by an offender as community service
5 under the Community Service Sentencing Act; and

6 (g) Service performed by a person fulfilling conditions
7 of probation pursuant to an order of a court of this state.

8 (3) If the employer is the state or any governmental
9 agency created by the state, the exemption from the act under
10 subdivision (2)(d) of this section does not apply.

11 (4) If the act applies to an employer because the
12 employer meets the requirements of subdivision (2)(d) of this
13 section, all unrelated employees shall be covered under the act and
14 such employees' wages shall be considered for premium purposes.

15 (5) If an employer to whom the act applies because the
16 employer meets the requirements of subdivision (2)(d) of this
17 section subsequently does not employ ten or more unrelated,
18 full-time employees, such employer shall continue to provide
19 workers' compensation insurance coverage for the employees for
20 the remainder of the calendar year and for the next full
21 calendar year. When the required coverage period has expired,
22 such employer may elect to return to exempt status by (a) posting,
23 continuously in a conspicuous place at the employment locations
24 of the employees for a period of at least ninety days, a written
25 or printed notice stating that the employer will no longer carry

1 workers' compensation insurance for the employees and the date such
2 insurance will cease and (b) thereafter no longer carrying a policy
3 of workers' compensation insurance. Failure to provide notice in
4 accordance with this subsection voids an employer's attempt to
5 return to exempt status.

6 (6) An employer who is exempt from the act under
7 subsection (2) of this section may elect to bring the employees of
8 such employer under the act. Such election is made by the employer
9 obtaining a policy of workers' compensation insurance covering
10 such employees. Such policy shall be obtained from a corporation,
11 association, or organization authorized and licensed to transact
12 the business of workers' compensation insurance in this state. If
13 such an exempt employer procures a policy of workers' compensation
14 insurance which is in full force and effect at the time of an
15 accident to an employee of such employer, such procurement is
16 conclusive proof of the employer's and employee's election to be
17 bound by the act. Such an exempt employer who has procured a policy
18 of workers' compensation insurance may elect to return to exempt
19 status by (a) posting, continuously in a conspicuous place at the
20 employment locations of the employees for a period of at least
21 ninety days, a written or printed notice stating that the employer
22 will no longer carry workers' compensation insurance for the
23 employees and the date such insurance will cease and (b) thereafter
24 no longer carrying a policy of workers' compensation insurance.
25 Failure to provide notice in accordance with this subsection voids

1 an employer's attempt to return to exempt status.

2 (7) Every employer exempted under subdivision (2)(d) of
3 this section who does not elect to provide workers' compensation
4 insurance under subsection (6) of this section shall give all
5 unrelated employees at the time of hiring or at any time more than
6 thirty calendar days prior to the time of injury the following
7 written notice which shall be signed by the unrelated employee
8 and retained by the employer: "In this employment you will not
9 be covered by the Nebraska Workers' Compensation Act and you will
10 not be compensated under the act if you are injured on the job
11 or suffer an occupational disease. You should plan accordingly."
12 Failure to provide the notice required by this subsection subjects
13 an employer to liability under and inclusion in the act for all
14 unrelated employees on the basis of failure to give such notice.

15 (8) An exclusion from coverage in any health, accident,
16 or other insurance policy covering a person employed by an employer
17 who is exempt from the act under this section which provides that
18 coverage under the health, accident, or other insurance policy
19 does not apply if such person is entitled to workers' compensation
20 coverage is void as to such person if such employer has not elected
21 to bring the employees of such employer within the act as provided
22 in subsection (6) of this section.

23 (9) For purposes of this section:

24 (a) Agricultural operation means (i) the cultivation of
25 land for the production of agricultural crops, fruit, or other

1 horticultural products or (ii) the ownership, keeping, or feeding
2 of animals for the production of livestock or livestock products;

3 (b) Full-time employee means a person who is employed to
4 work one-half or more of the regularly scheduled hours during each
5 pay period; and

6 (c) Related employee means a spouse of an employer and
7 an employee related to the employer within the third degree by
8 blood or marriage. Relationship by blood or marriage within the
9 third degree includes parents, grandparents, great grandparents,
10 children, grandchildren, great grandchildren, brothers, sisters,
11 uncles, aunts, nephews, nieces, and spouses of the same. If
12 the employer is a partnership, limited liability company, or
13 corporation in which all of the partners, members, or shareholders
14 are related within the third degree by blood or marriage, then
15 related employee means any employee related to any such partner,
16 member, or shareholder within the third degree by blood or
17 marriage.

18 Sec. 14. Section 48-115, Revised Statutes Cumulative
19 Supplement, 2008, is amended to read:

20 48-115 The terms employee and worker are used
21 interchangeably and have the same meaning throughout the Nebraska
22 Workers' Compensation Act. Such terms include the plural and all
23 ages and both sexes. For purposes of the act, employee or worker
24 shall be construed to mean:

25 (1) Every person in the service of the state or of any

1 governmental agency created by it, including the Nebraska National
2 Guard and members of the military forces of the State of Nebraska,
3 under any appointment or contract of hire, expressed or implied,
4 oral or written;

5 (2) Every person in the service of an employer who
6 is engaged in any trade, occupation, business, or profession as
7 described in section 48-106 under any contract of hire, expressed
8 or implied, oral or written, including aliens and also including
9 minors. Minors for the purpose of making election of remedies under
10 the Nebraska Workers' Compensation Act shall have the same power of
11 contracting and electing as adult employees.

12 As used in subdivisions (1) through ~~(11)~~ (10) of this
13 section, the terms employee and worker shall not be construed to
14 include any person whose employment is not in the usual course
15 of the trade, business, profession, or occupation of his or her
16 employer.

17 If an employee subject to the Nebraska Workers'
18 Compensation Act suffers an injury on account of which he or she
19 or, in the event of his or her death, his or her dependents would
20 otherwise have been entitled to the benefits provided by such act,
21 the employee or, in the event of his or her death, his or her
22 dependents shall be entitled to the benefits provided under such
23 act, if the injury or injury resulting in death occurred within
24 this state, or if at the time of such injury (a) the employment
25 was principally localized within this state, (b) the employer was

1 performing work within this state, or (c) the contract of hire was
2 made within this state;

3 (3) Volunteer firefighters of any fire department of
4 any rural or suburban fire protection district, city, village, or
5 nonprofit corporation, which fire department is organized under the
6 laws of the State of Nebraska. Such volunteers shall be deemed
7 employees of such rural or suburban fire protection district, city,
8 village, or nonprofit corporation while in the performance of their
9 duties as members of such department and shall be considered as
10 having entered and as acting in the regular course and scope of
11 their employment from the instant such persons commence responding
12 to a call to active duty, whether to a fire station or other
13 place where firefighting equipment that their company or unit
14 is to use is located or to any activities that the volunteer
15 firefighters may be directed to do by the chief of the fire
16 department or some person authorized to act for such chief. Such
17 volunteers shall be deemed employees of such rural or suburban fire
18 protection district, city, village, or nonprofit corporation until
19 their return to the location from which they were initially called
20 to active duty or until they engage in any activity beyond the
21 scope of the performance of their duties, whichever occurs first.

22 Members of such volunteer fire department, before they
23 are entitled to benefits under the Nebraska Workers' Compensation
24 Act, shall be recommended by the chief of the fire department
25 or some person authorized to act for such chief for membership

1 therein to the board of directors of the rural or suburban fire
2 protection district or nonprofit corporation, the mayor and city
3 commission, the mayor and council, or the chairperson and board of
4 trustees, as the case may be, and upon confirmation shall be deemed
5 employees of such entity. Members of such fire department after
6 confirmation to membership may be removed by a majority vote of the
7 entity's board of directors or governing body and thereafter shall
8 not be considered employees of such entity. Firefighters of any
9 fire department of any rural or suburban fire protection district,
10 nonprofit corporation, city, or village shall be considered as
11 acting in the performance and within the course and scope of their
12 employment when performing activities outside of the corporate
13 limits of their respective districts, cities, or villages, but only
14 if directed to do so by the chief of the fire department or some
15 person authorized to act for such chief;

16 (4) Members of the Nebraska Emergency Management Agency,
17 any city, village, county, or interjurisdictional emergency
18 management organization, or any state emergency response team,
19 which agency, organization, or team is regularly organized under
20 the laws of the State of Nebraska. Such members shall be
21 deemed employees of such agency, organization, or team while
22 in the performance of their duties as members of such agency,
23 organization, or team;

24 ~~(5) Any person fulfilling conditions of probation, or~~
25 ~~community service as defined in section 29-2277, pursuant to~~

1 any order of any court of this state who shall be working for
2 a governmental body, or agency as defined in section 29-2277,
3 pursuant to any condition of probation, or community service as
4 defined in section 29-2277. Such person shall be deemed an employee
5 of the governmental body or agency for the purposes of the Nebraska
6 Workers' Compensation Act;

7 ~~(6)~~ (5) Volunteer ambulance drivers and attendants and
8 out-of-hospital emergency care providers who are members of an
9 emergency medical service for any county, city, village, rural
10 or suburban fire protection district, nonprofit corporation, or
11 any combination of such entities under the authority of section
12 13-303. Such volunteers shall be deemed employees of such entity
13 or combination thereof while in the performance of their duties
14 as ambulance drivers or attendants or out-of-hospital emergency
15 care providers and shall be considered as having entered into and
16 as acting in the regular course and scope of their employment
17 from the instant such persons commence responding to a call to
18 active duty, whether to a hospital or other place where the
19 ambulance they are to use is located or to any activities that
20 the volunteer ambulance drivers or attendants or out-of-hospital
21 emergency care providers may be directed to do by the chief or
22 some person authorized to act for such chief of the volunteer
23 ambulance service or out-of-hospital emergency care service. Such
24 volunteers shall be deemed employees of such county, city, village,
25 rural or suburban fire protection district, nonprofit corporation,

1 or combination of such entities until their return to the location
2 from which they were initially called to active duty or until
3 they engage in any activity beyond the scope of the performance
4 of their duties, whichever occurs first. Before such volunteer
5 ambulance drivers or attendants or out-of-hospital emergency care
6 providers are entitled to benefits under the Nebraska Workers'
7 Compensation Act, they shall be recommended by the chief or some
8 person authorized to act for such chief of the volunteer ambulance
9 service or out-of-hospital emergency care service for membership
10 therein to the board of directors of the rural or suburban fire
11 protection district or nonprofit corporation, the governing body
12 of the county, city, or village, or combination thereof, as
13 the case may be, and upon such confirmation shall be deemed
14 employees of such entity or combination thereof. Members of such
15 volunteer ambulance or out-of-hospital emergency care service after
16 confirmation to membership may be removed by majority vote of the
17 entity's board of directors or governing body and thereafter shall
18 not be considered employees of such entity. Volunteer ambulance
19 drivers and attendants and out-of-hospital emergency care providers
20 for any county, city, village, rural or suburban fire protection
21 district, nonprofit corporation, or any combination thereof shall
22 be considered as acting in the performance and within the course
23 and scope of their employment when performing activities outside of
24 the corporate limits of their respective county, city, village, or
25 district, but only if directed to do so by the chief or some person

1 authorized to act for such chief;

2 ~~(7)~~ (6) Members of a law enforcement reserve force
3 appointed in accordance with section 81-1438. Such members shall
4 be deemed employees of the county or city for which they were
5 appointed;

6 ~~(8)~~ (7) Any offender committed to the Department of
7 Correctional Services who is employed pursuant to section 81-1827.
8 Such offender shall be deemed an employee of the Department of
9 Correctional Services solely for purposes of the Nebraska Workers'
10 Compensation Act;

11 ~~(9)~~ (8) An executive officer of a corporation elected
12 or appointed under the provisions or authority of the charter,
13 articles of incorporation, or bylaws of such corporation who
14 owns less than twenty-five percent of the common stock of such
15 corporation or an executive officer of a nonprofit corporation
16 elected or appointed under the provisions or authority of the
17 charter, articles of incorporation, or bylaws of such corporation
18 who receives annual compensation of more than one thousand dollars
19 from such corporation. Such executive officer shall be an employee
20 of such corporation under the Nebraska Workers' Compensation Act.

21 An executive officer of a corporation who owns
22 twenty-five percent or more of the common stock of such corporation
23 or an executive officer of a nonprofit corporation who receives
24 annual compensation of one thousand dollars or less from such
25 corporation shall not be construed to be an employee of the

1 corporation under the Nebraska Workers' Compensation Act unless
2 such executive officer elects to bring himself or herself within
3 the provisions of the act. Such election shall be in writing
4 and filed with the secretary of the corporation and with the
5 workers' compensation insurer. Such election shall be effective
6 upon receipt by the insurer for the current policy and subsequent
7 policies issued by such insurer and shall remain in effect until
8 the election is terminated, in writing, by the officer and the
9 termination is filed with the insurer or until the insurer ceases
10 to provide coverage for the corporation, whichever occurs first.
11 Any such termination of election shall also be filed with the
12 secretary of the corporation. If such an executive officer has
13 not elected to bring himself or herself within the provisions of
14 the act pursuant to this subdivision and a health, accident, or
15 other insurance policy covering such executive officer contains
16 an exclusion of coverage if the executive officer is otherwise
17 entitled to workers' compensation coverage, such exclusion is null
18 and void as to such executive officer.

19 It is the intent of the Legislature that the changes
20 made to this subdivision by Laws 2002, LB 417, shall apply to
21 policies of insurance against liability arising under the act with
22 an effective date on or after January 1, 2003, but shall not apply
23 to any such policy with an effective date prior to January 1, 2003;

24 ~~(10)~~ (9) Each individual employer, partner, limited
25 liability company member, or self-employed person who is actually

1 engaged in the individual employer's, partnership's, limited
2 liability company's, or self-employed person's business on a
3 substantially full-time basis who elects to bring himself or
4 herself within the provisions of the Nebraska Workers' Compensation
5 Act. Such election shall be in writing and filed with the
6 workers' compensation insurer. Such election shall be effective
7 upon receipt by the insurer for the current policy and subsequent
8 policies issued by such insurer and shall remain in effect until
9 the election is terminated, in writing, by such person and the
10 termination is filed with the insurer or until the insurer ceases
11 to provide coverage for the business, whichever occurs first. If
12 any such person who is actually engaged in the business on a
13 substantially full-time basis has not elected to bring himself or
14 herself within the provisions of the Nebraska Workers' Compensation
15 Act pursuant to this subdivision and a health, accident, or
16 other insurance policy covering such person contains an exclusion
17 of coverage if such person is otherwise entitled to workers'
18 compensation coverage, such exclusion shall be null and void as to
19 such person; and

20 ~~(11)~~ (10) An individual lessor of a commercial motor
21 vehicle leased to a motor carrier and driven by such individual
22 lessor who elects to bring himself or herself within the provisions
23 of the Nebraska Workers' Compensation Act. Such election is made if
24 he or she agrees in writing with the motor carrier to have the same
25 rights as an employee only for purposes of workers' compensation

1 coverage maintained by the motor carrier. For an election under
2 this subdivision, the motor carrier's principal place of business
3 must be in this state and the motor carrier must be authorized
4 to self-insure liability under the Nebraska Workers' Compensation
5 Act. Such an election shall (a) be effective from the date of
6 such written agreement until such agreement is terminated, (b) be
7 enforceable against such self-insured motor carrier in the same
8 manner and to the same extent as claims arising under the Nebraska
9 Workers' Compensation Act by employees of such self-insured motor
10 carrier, and (c) not be deemed to be a contract of insurance
11 for purposes of Chapter 44. Section 48-111 shall apply to the
12 individual lessor and the self-insured motor carrier with respect
13 to personal injury or death caused to such individual lessor by
14 accident or occupational disease arising out of and in the course
15 of performing services for such self-insured motor carrier in
16 connection with such lease while such election is effective.

17 Sec. 15. Section 48-126.01, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 48-126.01 In determining the compensation to be paid
20 any member of the military forces of this state, any member of
21 a law enforcement reserve force, any member of a volunteer fire
22 department in any rural or suburban fire protection district,
23 city, village, or nonprofit corporation, any member of the
24 Nebraska Emergency Management Agency, any city, village, county, or
25 interjurisdictional emergency management organization, or any state

1 emergency response team, or any member of a volunteer emergency
2 medical service, which military forces, law enforcement reserve
3 force, fire department, emergency management agency, organization,
4 or team, or volunteer emergency medical service is organized under
5 the laws of the State of Nebraska, ~~or any person fulfilling~~
6 ~~conditions of probation, or community service as defined in section~~
7 ~~29-2277, pursuant to any order of any court of this state who~~
8 ~~shall be working for a governmental body, or agency as defined~~
9 ~~in section 29-2277, pursuant to any condition of probation, or~~
10 ~~community service as defined in section 29-2277, for injuries~~
11 ~~resulting in disability or death received in the performance of his~~
12 ~~or her duties as a member of such military forces, reserve force,~~
13 ~~department, agency, organization, team, or service, or pursuant to~~
14 ~~an order of any court, the wages of such a member or person shall~~
15 ~~be taken to be those received by him or her from his or her regular~~
16 ~~employer, and he or she shall receive such proportion thereof as he~~
17 ~~or she is entitled to under the provisions of section 48-121.~~

18 If such member or person is not regularly employed by
19 some other person, for the purpose of such determination, it shall
20 be deemed and assumed that he or she is receiving income from his
21 or her business or from other employment equivalent to wages in
22 an amount one and one-half times the maximum compensation rate for
23 total disability.

24 If the wages received for the performance of duties as a
25 member of such military forces, reserve force, department, agency,

1 organization, team, or service exceed the wages received from a
2 regular employer, such member shall be entitled to a rate of
3 compensation based upon wages received as a member of such military
4 forces, reserve force, department, agency, organization, team, or
5 service.

6 Sec. 16. Section 48-145, Revised Statutes Cumulative
7 Supplement, 2008, is amended to read:

8 48-145 To secure the payment of compensation under the
9 Nebraska Workers' Compensation Act:

10 (1) Every employer in the occupations described in
11 section 48-106, except the State of Nebraska and any governmental
12 agency created by the state, shall either (a) insure and keep
13 insured its liability under such act in some corporation,
14 association, or organization authorized and licensed to transact
15 the business of workers' compensation insurance in this state,
16 (b) in the case of an employer who is a lessor of one or more
17 commercial vehicles leased to a self-insured motor carrier, be
18 a party to an effective agreement with the self-insured motor
19 carrier under section 48-115.02, (c) be a member of a risk
20 management pool authorized and providing group self-insurance of
21 workers' compensation liability pursuant to the Intergovernmental
22 Risk Management Act, or (d) with approval of the Nebraska
23 Workers' Compensation Court, self-insure its workers' compensation
24 liability.

25 An employer seeking approval to self-insure shall make

1 application to the compensation court in the form and manner as
2 the compensation court may prescribe, meet such minimum standards
3 as the compensation court shall adopt and promulgate by rule and
4 regulation, and furnish to the compensation court satisfactory
5 proof of financial ability to pay direct the compensation in the
6 amount and manner when due as provided for in the Nebraska Workers'
7 Compensation Act. Approval is valid for the period prescribed
8 by the compensation court unless earlier revoked pursuant to
9 this subdivision or subsection (1) of section 48-146.02. The
10 compensation court may by rule and regulation require the deposit
11 of an acceptable security, indemnity, trust, or bond to secure
12 the payment of compensation liabilities as they are incurred.
13 The agreement or document creating a trust for use under this
14 section shall contain a provision that the trust may only be
15 terminated upon the consent and approval of the compensation
16 court. Any beneficial interest in the trust principal shall be
17 only for the benefit of the past or present employees of the
18 self-insurer and any persons to whom the self-insurer has agreed
19 to pay benefits under subdivision ~~(11)~~ (10) of section 48-115 and
20 section 48-115.02. Any limitation on the termination of a trust and
21 all other restrictions on the ownership or transfer of beneficial
22 interest in the trust assets contained in such agreement or
23 document creating the trust shall be enforceable, except that any
24 limitation or restriction shall be enforceable only if authorized
25 and approved by the compensation court and specifically delineated

1 in the agreement or document.

2 Notwithstanding any other provision of the Nebraska
3 Workers' Compensation Act, a three-judge panel of the compensation
4 court may, after notice and hearing, revoke approval as a
5 self-insurer if it finds that the financial condition of the
6 self-insurer or the failure of the self-insurer to comply with
7 an obligation under the act poses a serious threat to the public
8 health, safety, or welfare. The Attorney General, when requested
9 by the administrator of the compensation court, may file a motion
10 pursuant to section 48-162.03 for an order directing a self-insurer
11 to appear before a three-judge panel of the compensation court
12 and show cause as to why the panel should not revoke approval
13 as a self-insurer pursuant to this subdivision. The Attorney
14 General shall be considered a party for purposes of such motion.
15 The Attorney General may appear before the three-judge panel and
16 present evidence that the financial condition of the self-insurer
17 or the failure of the self-insurer to comply with an obligation
18 under the act poses a serious threat to the public health, safety,
19 or welfare. The presiding judge shall rule on a motion of the
20 Attorney General pursuant to this subdivision and, if applicable,
21 shall appoint judges of the compensation court to serve on the
22 three-judge panel. The presiding judge shall not serve on such
23 panel. Appeal from a revocation pursuant to this subdivision
24 shall be in accordance with section 48-185. No such appeal shall
25 operate as a supersedeas unless the self-insurer executes to the

1 compensation court a bond with one or more sureties authorized to
2 do business within the State of Nebraska in an amount determined by
3 the three-judge panel to be sufficient to satisfy the obligations
4 of the self-insurer under the act;

5 (2) An approved self-insurer shall furnish to the State
6 Treasurer an annual amount equal to two and one-half percent of
7 the prospective loss costs for like employment but in no event
8 less than twenty-five dollars. Prospective loss costs is defined
9 in section 48-151. The compensation court is the sole judge as
10 to the prospective loss costs that shall be used. All money which
11 a self-insurer is required to pay to the State Treasurer, under
12 this subdivision, shall be computed and tabulated under oath as of
13 January 1 and paid to the State Treasurer immediately thereafter.
14 The compensation court or designee of the compensation court may
15 audit the payroll of a self-insurer at the compensation court's
16 discretion. All money paid by a self-insurer under this subdivision
17 shall be credited to the General Fund;

18 (3) Every employer who fails, neglects, or refuses to
19 comply with the conditions set forth in subdivision (1) or (2) of
20 this section shall be required to respond in damages to an employee
21 for personal injuries, or when personal injuries result in the
22 death of an employee, then to his or her dependents; and

23 (4) Any security, indemnity, trust, or bond provided by
24 a self-insurer pursuant to subdivision (1) of this section shall
25 be deemed a surety for the purposes of the payment of valid

1 claims of the self-insurer's employees and the persons to whom the
2 self-insurer has agreed to pay benefits under the Nebraska Workers'
3 Compensation Act pursuant to subdivision ~~(11)~~ (10) of section
4 48-115 and section 48-115.02 as generally provided in the act.

5 Sec. 17. Section 48-147, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 48-147 Nothing in the Nebraska Workers' Compensation
8 Act shall affect any existing contract for employers liability
9 insurance, or affect the organization of any mutual or other
10 insurance company, or any arrangement existing between employers
11 and employees, providing for payment to such employees, their
12 families, dependents, or representatives, sick, accident, or death
13 benefits in addition to the compensation provided for by such
14 act; but liability for compensation under such act shall not be
15 reduced or affected by any insurance of the injured employee, or
16 any contribution or other benefit whatsoever, due to or received
17 by the person entitled to such compensation, and the person so
18 entitled shall, irrespective of any insurance or other contract,
19 have the right to recover the same directly from the employer, and
20 in addition thereto, the right to enforce in his or her own name in
21 the manner provided in section 48-146 the liability of any insurer
22 who may, in whole or in part, have insured the liability for such
23 compensation. Payment in whole or in part of such compensation by
24 either the employer or the insurer, as the case may be, shall,
25 to the extent thereof, be a bar to recovery against the other

1 of the amount so paid. No agreement by an employee to pay any
2 portion of premium paid by his or her employer or to contribute
3 to a benefit fund or department maintained by such employer for
4 the purpose of providing compensation as required by the Nebraska
5 Workers' Compensation Act shall be valid, and any employer who
6 makes a deduction for such purpose from the pay of any employee
7 entitled to the benefits of such act shall be guilty of a Class
8 II misdemeanor. Nothing in this section invalidates or prohibits
9 agreements pursuant to subdivision ~~(11)~~ (10) of section 48-115 or
10 section 48-115.02.

11 Sec. 18. Section 53-180.05, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 53-180.05 (1) Any person violating section 53-180 shall
14 be guilty of a Class I misdemeanor. Any person violating any of
15 the provisions of sections 53-180.01 ~~to~~ or 53-180.03 shall be
16 guilty of a Class III misdemeanor. Any person violating section
17 53-180.02 shall be guilty of a Class III misdemeanor and if such
18 person has a motor vehicle operator's license, the court shall
19 impound such person's operator's license for ninety days upon the
20 first conviction and for one year upon any second or subsequent
21 conviction.

22 (2) Any person who knowingly manufactures, creates, or
23 alters any form of identification for the purpose of sale or
24 delivery of such form of identification to a person under the age
25 of twenty-one years shall be guilty of a Class I misdemeanor. For

1 purposes of this subsection, form of identification means any card,
2 paper, or legal document that may be used to establish the age of
3 the person named thereon for the purpose of purchasing alcoholic
4 liquor.

5 (3) When a minor is arrested for a violation of sections
6 53-180 to 53-180.02 or subsection (2) of this section, the law
7 enforcement agency employing the arresting peace officer shall make
8 a reasonable attempt to notify such minor's parent or guardian of
9 the arrest.

10 Sec. 19. Section 60-6,211.02, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 60-6,211.02 (1) Any person who operates or has in his or
13 her actual physical control a motor vehicle in this state shall be
14 deemed to have given his or her consent to submit to a chemical
15 test or tests of his or her blood or breath for the purpose of
16 determining the concentration of alcohol in such blood or breath.

17 (2) Any peace officer who has been duly authorized to
18 make arrests for violations of traffic laws of this state or of
19 ordinances of any city or village may require any person under
20 twenty-one years of age to submit to a chemical test or tests
21 of his or her blood or breath for the purpose of determining the
22 concentration of alcohol in such blood or breath when the officer
23 has probable cause to believe that such person was driving or was
24 in the actual physical control of a motor vehicle in this state
25 in violation of section 60-6,211.01. Such peace officer may require

1 such person to submit to a preliminary breath test. Any person
2 who refuses to submit to such preliminary breath test or whose
3 preliminary breath test results indicate an alcohol concentration
4 in violation of section 60-6,211.01 shall be placed under arrest.

5 (3) Any person arrested as provided in this section may,
6 upon the direction of a peace officer, be required to submit to
7 a chemical test or tests of his or her blood or breath for a
8 determination of the concentration of alcohol. If the chemical test
9 discloses the presence of a concentration of alcohol in violation
10 of section 60-6,211.01, the person shall be found guilty of a
11 traffic infraction as defined in section 60-672 and upon the first
12 conviction of violation of section 60-6,211.01 shall have his or
13 her operator's license impounded by the court for ~~thirty~~ ninety
14 days for each violation of section 60-6,211.01. and upon any second
15 or subsequent conviction of violation of such section shall have
16 his or her operator's license impounded by the court for one year.

17 Any person who refuses to submit to such test or tests required
18 pursuant to this section shall not have the tests taken but shall
19 be found guilty of a traffic infraction as defined in section
20 60-672 and upon conviction shall have his or her operator's license
21 impounded by the court for ninety days for refusal to submit to
22 such tests required pursuant to this section.

23 Sec. 20. Section 60-6,211.06, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 60-6,211.06 (1) An abstract of the court record of

1 every person whose license has been impounded pursuant to section
2 53-180.05 or 60-6,211.02 shall be transmitted to the Department of
3 Motor Vehicles. This violation shall become part of the person's
4 record maintained by the department for a period of not longer than
5 ~~ninety days. After ninety days,~~ more than sixty days longer than
6 the period of impoundment. After such time, the department shall
7 expunge the violation from the person's record.

8 (2) Any person whose license has been impounded pursuant
9 to section 60-6,211.02 and who refused to submit to a chemical test
10 or tests required pursuant to such section shall have the violation
11 become part of the person's record maintained by the department
12 for a period of not longer than one hundred twenty days. After
13 one hundred twenty days, the department shall expunge the violation
14 from the person's record.

15 Sec. 21. Original sections 29-2262, 29-2266, 29-2277,
16 29-2278, 29-2279, 48-126.01, 48-147, 53-180.05, 60-6,211.02, and
17 60-6,211.06, Reissue Revised Statutes of Nebraska, sections 48-115
18 and 48-145, Revised Statutes Cumulative Supplement, 2008, and
19 section 48-106, Revised Statutes Supplement, 2009, are repealed.